

SUSTAINING AFFORDABILITY

THE ROLE OF THE
TENANT OPPORTUNITY
TO PURCHASE ACT (TOPA)
IN WASHINGTON, DC



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ABOUT THE COALITION FOR NONPROFIT HOUSING AND ECONOMIC DEVELOPMENT

Established in 2000, the Coalition for Nonprofit Housing and Economic Development (CNHED) is a dynamic 501(c)(3) association of 140 organizational members working to foster just and equitable community development solutions that address the needs and aspirations of low- and moderate-income District of Columbia residents. CNHED's members represent a broad spectrum of nonprofits, for-profits, and government agencies that build, preserve, and manage affordable housing; provide tenant technical services; protect tenants' rights; offer homeownership counseling; advise and lead capital to small businesses and community projects; connect residents to career pathways; deliver critical family services; and engage, represent, and benefit low- and moderate-income residents of the District.

A LETTER FROM THE PRESIDENT

As the President and CEO of the Coalition for Nonprofit Housing and Economic Development (CNHED), I am honored to present to you "*Sustaining Affordability*," our comprehensive analysis of the Tenant Opportunity to Purchase Act (TOPA), a Washington, DC Law that provides tenants with the right to purchase the rental facility where they live in the event it is placed on the market for sale.

At CNHED, we are committed to advancing community economic development solutions that address the inequity of under-resourced communities in the District of Columbia, cultivating an environment where individuals and families thrive. Housing is a cornerstone of this commitment. TOPA, a pioneering legislation, was created with the noble intent of ensuring tenants' rights in property sales and enabling them to play an active role in the future of their homes. Yet, the real-world implications, benefits, and challenges of this act remain a topic of robust discussion and scrutiny.

Our study, "*Sustaining Affordability*," delves deep into the intricate layers of TOPA, bringing forward an unbiased, in-depth perspective on its effectiveness, areas of improvement, and the broader implications for the DC community. The research took us on a journey through diverse neighborhoods, allowing us to engage with tenants, landlords, policymakers, and real estate professionals, thereby painting a holistic picture of TOPA's impact.

The key findings from our study underscore the potential of TOPA in creating more equitable housing policies and its significance in empowering tenants. However, they also highlight areas that need refinement to ensure the act's objectives are consistently met and that all stakeholders have clarity and fairness in the process.

Our vision for "*Sustaining Affordability*" goes beyond presenting findings. We hope it serves as a beacon for constructive dialogue, policy adjustments, and



"We believe in a future where everyone has a seat at the decision-making table."

greater collaboration between tenants, property owners, and policymakers working toward a collective goal of not only preserving and protecting equitable solutions like TOPA, but also vibrant, long-standing communities in the District. We believe in a future where everyone has a seat at the decision-making table, and this study, we hope, will pave the path forward.

We extend our gratitude to all participants who contributed to this research. Your voices, experiences, and insights were instrumental in shaping the narrative. Please join us in this journey of discovery, reflection, and action. Together, we can work towards a District of Columbia that is racially, economically and socially just.

Warm Regards,

Stephen Glaude

President and CEO

Coalition for Nonprofit Housing and Economic Development

TABLE OF CONTENTS

A LETTER FROM THE PRESIDENT	1		
ABOUT THE STUDY	3		
EXECUTIVE SUMMARY	4		
METHODOLOGY	14		
BACKGROUND	16		
FINDINGS	21		
#1 Impact on housing stock	22		
#2 A seat at the table	31		
#3 Tenants help shape development outcomes	34		
#4 Entire building buyouts are rare	48		
#5 Support infrastructure is key	51		
#6 Challenges impede affordable development	58		
#7 TOPA takes additional time	64		
CASE STUDIES	26		
#1 Congress Heights Metro Project	26		
#2 1460 Euclid St	27		
#3 Belmont Crossing	28		
#4 1111 Massachusetts Ave NW	29		
#5 Beech Tree Place 7428 Georgia Ave	30		
#6 Ridgecrest Village	36		
#7 Tivoli Gardens	38		
#8 Randle Heights	39		
#9 Capital Park Towers	41		
#10 Aspen Street Cooperative	43		
#11 Channel Square	45		
#12 3218 Wisconsin Avenue Cooperative	46		
#13 Wah Luck House	47		
#14 Mt Pleasant Preservation Project	50		
#15 Ft. Chaplin Park	54		
#16 La Union Buena Vista Cooperative	56		
RECOMMENDATIONS	66		
#1 Realign DHCD funding priorities	66		
#2 Safeguard tenant rights	67		
#3 Expand access	68		
#4 Create tenant awareness	69		
#5 Adopt data and reporting measures	70		
#6 Establish a TOPA task force	71		
GLOSSARY	72		
APPENDICES	73		
A Ward by Ward Tables of Affordable Projects	73		
B Additional tables on subsidies used in TOPA projects	86		
C Legislative and Legal Review of the TOPA Statute: 1980 to 2022	88		
D Housing Cooperatives: Still a Vital Option for Affordable Homeownership	98		
E Voluntary Agreements - One Route to Higher Rents That May Complicate TOPA Affordability	101		
F Chronology of TOPA Citations (July, 1976 - June, 2022)	102		
G Tenant Opportunity to Purchase Act Timeline	108		

ABOUT THE STUDY

The Coalition for Nonprofit Housing and Economic Development (CNHED), at the behest of The Council of the District of Columbia (D.C. Council) studied the outcomes and impacts of the District of Columbia's Tenant Opportunity to Purchase Act (TOPA) and its antecedents from 1975-2021 in order to evaluate the extent to which TOPA has fulfilled the legislative objectives and purposes set out in the Rental Housing Conversion and Sale Act of 1980 and provided recommendations for how the District can improve the ability of tenant organizations to successfully exercise their TOPA rights to achieve these purposes. The D.C. Council has also funded this study.

The primary focus of the study is to evaluate the extent to which the Tenant Opportunity to Purchase Act has fulfilled the TOPA-related purposes of the Rental Housing Conversion and Sale Act and to provide recommendations for how the District can improve the ability of tenant organizations to successfully exercise their TOPA rights to achieve these purposes, which are:

- To discourage the displacement of tenants through conversion or sale of rental property, and to strengthen the bargaining position of tenants toward that end without unduly interfering with the rights of property owners to the due process of law;
- To preserve rental housing which can be afforded by lower income tenants in the District;
- To encourage the formation of tenant organizations; and
- To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement.¹

The study contains three components:

- A legislative, regulatory, legal, and policy history of TOPA and its antecedents (1975-2021),
- A descriptive analysis of TOPA properties, property owners, tenant organizations, and outcomes (2006-2020), and
- An analysis of TOPA history and outcomes and recommendations for improvement.

¹ <https://code.dccouncil.us/dc/council/code/sections/42-3401.02.html>

EXECUTIVE SUMMARY

Born as part of sweeping housing legislation for Washington D.C. in 1980, the Tenant Opportunity to Purchase Act has seen many adjustments, exemptions, and iterations over its 40 years of existence. It's been a rights-giving housing policy empowering tenants amid the swirling tides of gentrification, especially in the last 20 years. One iteration TOPA has never been through, however, is that of being seriously studied to measure its efficacy both now and in the future across an ever-changing urban landscape.

The Coalition for Nonprofit Housing and Economic Development (CNHED) studied the outcomes and impacts of TOPA and its antecedents from 1975-2021 in order to evaluate the extent to which TOPA has fulfilled the legislative objectives and purposes set out in the Rental Housing Conversion and Sale Act of 1980, and provided recommendations for how the District can improve the ability of tenant organizations to successfully exercise their TOPA rights to achieve these purposes. This study includes information for over 83% of multifamily sales during the period when tenants took at least the first step in TOPA to form a tenant association (TA) and register their interest in TOPA. The information provided goes well beyond what was available publicly to include key decisions that tenant associations made through TOPA. That is to say, this study was able to analyze what happened in a large majority of TOPA sales.



METHODOLOGY

Our team of researchers, consulting contributors, and subject matter experts have performed a comprehensive data collection process which covered a significant majority of TOPA sales and associated information, shedding light on various aspects of the process, from tenant association participation to affordable housing preservation. Qualitative insights were gathered through interviews and focus groups, providing perspectives from different stakeholders involved in the TOPA process, including residents, developers, legal services providers, and more.

BACKGROUND ON TOPA

TOPA's roots trace back to the late 1970s and early 1980s, a time of urban renewal in the Nation's Capital. Gentrification, renovations, and development projects in certain neighborhoods were starting to displace long-standing residents, disproportionately affecting marginalized communities. Recognizing these challenges, the District of Columbia City Council established TOPA to empower tenants in decisions related to their housing security. It introduced a mechanism allowing tenants to match third-party purchase offers, aligning tenant rights with property owner interests while prioritizing housing stability and affordability.

Enacted in 1980, TOPA has emerged as a cornerstone of tenant protections and housing preservation strategies that strives to balance landlords' property rights and tenants' housing security. This comprehensive law addresses the complexities of gentrification, escalating housing costs, and displacement, particularly when affecting marginalized communities. By affording tenants the chance to purchase their rental properties during sales, TOPA aims to ensure housing security, tenant empowerment, and affordability.

To provide context, the study also conducted a thorough review of the legislative, regulatory, legal, and policy history of TOPA from 1975 to 2021. The study includes 16 case studies featured throughout the report, representing various examples of the findings. These case studies are inclusive of all eight wards in the District and are indicative of TOPA's effectiveness across D.C.

Its recognition as a model for other cities demonstrates its enduring effectiveness as a housing policy.

The primary objectives of TOPA include the preservation of affordable housing, mitigating tenant displacement, and fostering tenant engagement. By offering a structured process, TOPA allows tenants to organize tenant associations, present purchase offers, and even assign their rights to a purchaser of their choosing. Community Based Organizations (CBOs) play a pivotal role in raising awareness, providing technical assistance, and advocating for tenant rights throughout the process.

Despite TOPA's record for positive impact, concerns have been raised about delays, future financial implications for multifamily real estate, and unreasonable tenant demands. However, these issues often reflect broader economic changes, such as shifts caused by the COVID-19 pandemic and higher interest rates, rather than direct outcomes of TOPA. TOPA remains a significant effort in addressing urban transformation, tenant displacement, and housing affordability, reflecting the District's commitment to inclusive and equitable housing solutions.

SUMMARY OF FINDINGS

Through this analysis, both quantitative and qualitative, the study has found that:

- ✓ TOPA is fundamentally successful in offering tenants a seat at the table in negotiations over sale of their building.
- ✓ TOPA made a meaningful impact on improving the District's affordable housing stock and reducing displacement, especially in the more recent years.
- ✓ TOPA negotiation allows tenants to shape development outcomes to achieve tenant goals related to renovation, affordability, and homeownership.
- ✓ Tenant buyouts are sometimes an outcome, but buyouts of an entire building are rare.
- ✓ TOPA relies on a support infrastructure of tenant organizers, technical assistance providers, attorneys, developers, and flexible financing tools.
- ✓ There are major challenges that impede affordable development based on TOPA rights.
- ✓ The timeline to sell an occupied building is extended by TOPA.

FINDING # 1: TOPA made a meaningful impact on preserving the District’s affordable housing stock, improving housing conditions, and reducing displacement.

Overall, the study highlights that tenants using TOPA have played a crucial role in maintaining affordable housing, improving living conditions, and mitigating displacement in the District, particularly as tenant associations have become more engaged and aware of the pressing housing challenges.

There were 19,170 units where TAs were able to successfully negotiate a rental or ownership outcome comprising **51% of the entire number of units sold** following a TOPA notice in our study period (37,471 units). This consists of 18,399 units developed through the assignment of rights, and 771 units purchased as tenant-sponsored cooperatives. These correspond to 74% of all registered tenant associations (and 84% of registered units) which either assigned their rental rights or engaged in co-op or condo purchases.

The pace of TOPA assignments increased over time, in correlation to the District’s affordable housing crisis. The distribution of these assignments by ward highlights the effectiveness of TOPA, particularly in wards 8, 1, and 4. Ward 8 saw a remarkable increase in TOPA assignments during this period, aligning with the rising development interest in the area.

Naturally, tenant associations more often view buildings as home, and not just a real estate deal, leading them to explore development options that align with their housing

In total, 16,224 affordable units were developed or preserved through TOPA.

needs and community-oriented goals. Affordability was a major focus of TOPA negotiations, with many projects preserving or adding affordability through subsidy programs like the Low-Income Housing Tax Credit (LIHTC), project-based Section 8, Housing Production Trust Fund, rent control extensions, and limited equity cooperatives. These efforts resulted in the preservation of a substantial number of affordable rental units and the maintenance of LIHTC in numerous properties. **In total, 16,224 affordable units were developed or preserved through TOPA.**

TABLE C: RESIDENTIAL RENTAL UNITS IN PROPERTIES WHERE TENANTS ASSIGNED RIGHTS OR PURCHASED AS CO-OP WITH AFFORDABILITY ADDED OR PRESERVED

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	16,224	536	543	296	537	1,257	1,068	1,488	2,397	908	1,907	1,305	1,751	1,474	415	342
Ward 1	2,499	-	21	189	150	457	147	457	86	96	86	35	486	227	29	33
Ward 2	1,941	173	170	63	-	565	160	215	25	-	10	171	152	67	42	128
Ward 3	589	-	-	-	-	74	95	-	251	103	-	7	-	59	-	-
Ward 4	2,671	69	245	31	244	59	358	354	154	232	196	272	54	297	88	18
Ward 5	880	-	-	13	95	-	104	-	-	106	159	93	59	53	110	88
Ward 6	1,441	-	10	-	-	-	204	416	256	-	-	267	-	288	-	-
Ward 7	2,052	162	97	-	48	66	-	28	91	36	920	157	110	280	26	31
Ward 8	4,151	132	-	-	-	36	-	18	1,534	335	536	303	890	203	120	44

Data include properties acquired where affordability is in place or is planned, and are tied to the year of the TOPA notice, not the development. Affordability is through LIHTC, Section 8 or other project-based subsidy, rent control, or LE co-op.

FINDING #2: TOPA is fundamentally successful in offering tenants a seat at the table in negotiations over sale of their building.

TOPA has empowered tenants to participate in the negotiations concerning the sale of their buildings by exercising TOPA rights. During our study period from 2006-2020, TOPA enabled the formation of more than 425 tenant associations, representing 45% of sales and 62% of units sold. Tenant organizing has increased over time, with response rates growing from 37% in 2006-2010 to 50% in 2016-2020.

TABLE A: CAPSULE SUMMARY OF TOPA OUTCOMES IN FINDINGS 1 AND 2

Total units sold after TOPA notice	37,471
Of these, # with TA registrations	23,266
Of these, # with TA negotiation of assignment + co-op/condo purchase	19,170
Of these, # units with affordability added or preserved thru TOPA action	16,224

One of the stated goals of the TOPA statute was to “encourage the formation of tenant associations,” and it has done so. These associations can give tenants an organized, democratic voice in the management and development of the buildings where they live.

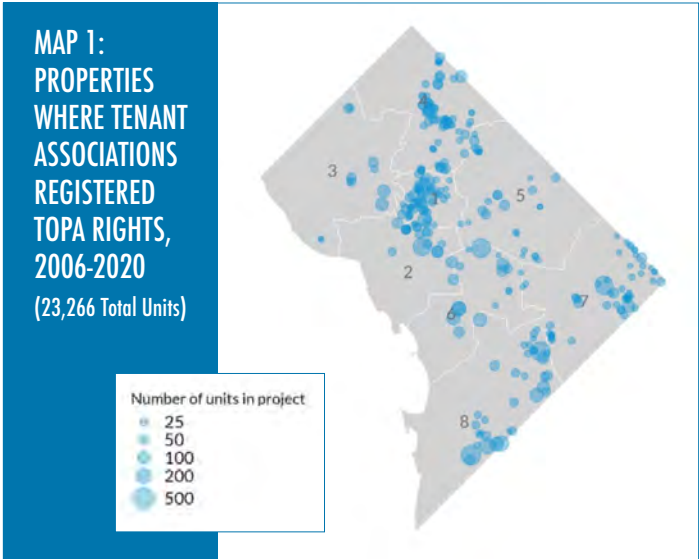


TABLE B: RESIDENTIAL UNITS IN PROPERTIES WHERE TENANTS REGISTERED FOR TOPA RIGHTS, 2006-2020 BY WARD

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	23,266	1,079	884	702	720	1,576	1,569	1,907	3,031	2,177	2,332	1,559	1,787	1,966	1,258	719
Ward 1	3,555	-	53	502	197	504	446	801	256	189	128	30	100	245	71	33
Ward 2	2,645	173	248	63	84	575	212	223	267	132	10	171	173	114	58	142
Ward 3	1,730	371	32	-	13	74	147	-	288	130	-	38	100	289	248	-
Ward 4	3,747	89	303	50	244	278	380	388	237	292	434	276	252	304	185	35
Ward 5	1,203	28	60	13	116	-	118	-	89	125	167	93	66	82	127	119
Ward 6	2,924	-	19	-	18	41	225	416	256	909	33	425	72	300	54	156
Ward 7	2,648	286	155	74	48	68	12	53	91	49	951	223	122	380	57	79
Ward 8	4,814	132	14	-	-	36	29	26	1,547	351	609	303	902	252	458	155

Note: Data refer to the year a TOPA notice is sent.

Contrary to misconceptions, data reveal that only a small proportion of sales with TOPA registrations involve newer properties, and tenant associations are typically formed in older properties to upgrade and preserve affordable housing. While tenants can choose not to exercise TOPA rights, properties with housing subsidies almost always register their interest in purchasing, and tenant associations provide leverage in negotiations to protect tenants from exploitative buyout agreements.

FINDING #3: TOPA negotiation allows tenants to shape development outcomes to achieve tenant goals related to renovation, affordability, and homeownership.

TOPA negotiation provides tenants with the opportunity to shape development outcomes to align with their goals related to renovation, affordability, and homeownership. The process allows tenant associations to secure renovations or repairs as conditions of property assignments, addressing quality of life concerns in existing buildings. Major renovations, even demolition and new construction, as well as modest repairs, are negotiated through TOPA agreements. These renovations often include accommodations like onsite temporary relocations to prevent displacement.

TABLE D: RESIDENTIAL UNITS IN PROPERTIES WITH RENOVATIONS OR REPAIRS IN TENANT DEVELOPMENT AGREEMENT OR PURCHASE

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	14,993	481	440	279	495	723	1,096	1,228	2,269	995	1,945	1,515	1,943	1,099	377	108
Ward 1	2,792	-	21	266	157	486	193	371	179	163	114	30	486	227	66	33
Ward 2	1,156	173	170	-	-	-	160	63	25	113	10	171	162	67	42	-
Ward 3	447	-	-	-	-	74	95	-	251	-	-	7	-	20	-	-
Ward 4	2,661	69	142	-	174	59	340	332	188	242	215	276	252	297	75	-
Ward 5	797	-	-	13	116	-	104	-	-	106	143	93	59	53	110	-
Ward 6	897	-	10	-	-	-	204	416	-	-	-	267	-	-	-	-
Ward 7	1,955	94	97	-	48	68	-	28	91	36	927	167	88	280	-	31
Ward 8	4,288	145	-	-	-	36	-	18	1,535	335	536	504	896	155	84	44

Meaningful affordability is a significant tenant priority in TOPA negotiations, often involving rent control, LIHTC, HPTF, and subsidy programs such as Project-Based Section 8 and the Local Rent Supplement Program. Specific rent control provisions for current tenants in TOPA agreements using LIHTC ("LIHTC-plus") ensures rents remain at current levels or follow stricter limits, preventing displacement. There were **7,712 TOPA units** where rent control extension was the primary affordable protection and **7,774 units** in projects using LIHTC, often in combination with DHCD Housing Production Trust Fund (HPTF) and D.C. Housing Finance Agency loans. There were **3,620 units** in TOPA projects with HPTF loans, many of which are included in the LIHTC count. (See Appendix B for detailed data on LIHTC and HPTF funded projects where tenants exercised TOPA rights.)

Tenant associations negotiate to extend Section 8 contracts to maintain federal subsidies, and these agreements contribute to preserving affordability. Among TOPA negotiated rentals, 21 projects with **3,082 subsidized units** had project-based Section

8.² There was a Local Rental Supplement Program subsidy in a few other projects (exact unit count was not available.)

Moreover, TOPA enables certain tenant associations to purchase their buildings as limited equity cooperatives (LECs), fostering long-term stability and neighborhood continuity, especially for immigrant families. The frequency of LEC purchase has slowed somewhat in recent years due to extraordinarily high costs of acquisition, but in our study period there were 29 new co-ops with **771 co-op units** created through exercise of TOPA rights. (See Appendix D for more detail about cooperatives.)

TOPA's impact on maintaining diversity in gentrifying neighborhoods is noteworthy. By allowing tenants to remain in expensive areas through co-op purchases or partnerships with developers, the program counterbalances the trend of displacement due to gentrification by retaining housing units where tenants negotiate TOPA deals, which can also be a boon for racial equity, particularly in areas like Ward 8.

² In addition to projects where tenant associations registered, there are another 3 properties with 692 units where project-based Section 8 was extended without negotiation involving the tenant association.

FINDING #4:

Tenant buyouts are sometimes an outcome, but buyouts of an entire building are rare.

Tenant buyouts, which involve offering tenants compensation to vacate their units, are not as common as often perceived. Buyouts typically occur when tenants' rents are below market rates, making vacant units more valuable. The study's analysis reveals that buyouts are infrequent, and only a small fraction of TOPA cases involve properties being fully vacated through buyouts, leading to the loss of affordability. In cases with known buyout information, out of more than 17,000 units (295 properties), only 403 units (22 properties) were subject to 100% buyouts.

TABLE E: RESIDENTIAL UNITS IN PROPERTIES WITH KNOWN BUYOUT STATUS BASED ON DEVELOPMENT AGREEMENTS/CBOS

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	17,827	839	477	508	605	1,306	1,240	1,301	2,601	1,179	2,058	1,336	2,044	1,520	510	303
<i>With buyouts</i>																
100%	403	-	15	-	-	-	42	37	21	87	38	16	15	-	98	34
Partial/ Option	3,349	46	-	161	331	112	302	149	518	484	70	49	123	599	193	212
None	14,075	793	462	347	274	1,194	896	1,115	2,062	608	1,950	1,271	1,906	921	219	57

Note: In a "100% buyout" all tenants took payments and vacated the property. "Partial/Option" buyout means that existing residents had a choice of whether to remain under the TOPA development plan or vacate and receive a buyout.

Additionally, 66 sales included partial or optional buyouts. Though rare, it's important to note that buyouts are not driven by tenants but initiated by developers or brokers, and they are legal outside the TOPA process as well. Recent trends show an increase in the use of 100% buyouts starting in 2019, partly influenced by market dynamics and acquisition prices.



FINDING #5: TOPA relies on a support infrastructure of tenant organizers, technical assistance providers, attorneys, developers, and flexible financing tools.

The success of TOPA relies on a comprehensive support infrastructure that includes tenant organizers, technical assistance providers, attorneys, developers, and specialized financing tools. These technical assistance providers play a crucial role, assisting tenants in understanding their rights, making informed decisions, negotiating assignments of rights, and exploring feasible options. Tenant organizations, often stretched due to high demand and capacity limitations, have a significant impact on the success of TOPA, particularly in achieving outcomes with affordability. For our 2006-2020 TOPA notice period, CBOs provided substantive support to 421 tenant groups, which is **45% of all buildings** with notices and sale. This corresponds to 20,534 units or **55% of all units** in the study group.

TABLE F: RESIDENTIAL UNITS IN PROPERTIES WITH CBO INVOLVEMENT

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	20,534	586	711	364	479	1,185	1,394	1,380	2,816	2,056	2,921	1,450	1,819	1,772	865	736
Ward 1	2,895	-	21	207	63	466	274	515	98	174	245	25	469	239	66	33
Ward 2	1,846	46	81	-	-	565	203	152	267	14	10	186	162	74	47	39
Ward 3	526	-	-	-	-	-	95	-	251	103	-	18	-	59	-	-
Ward 4	3,363	89	303	74	244	69	380	423	203	294	447	284	54	314	185	-
Ward 5	1,618	28	66	13	-	-	194	80	109	147	496	93	77	80	122	113
Ward 6	2,441	-	19	-	-	-	231	133	256	909	21	143	72	294	28	335
Ward 7	2,888	291	158	70	137	31	17	51	91	61	1,070	257	64	446	74	70
Ward 8	4,957	132	63	-	35	54	-	26	1,541	354	632	444	921	266	343	146

Tenant attorneys with specific TOPA expertise are pivotal in the negotiation and development of agreements, in the assignment of rights, the purchase of the building, or in buyouts. However, the limited number of attorneys specialized in TOPA cases poses a challenge, as the workload and demand exceed the available legal expertise. The involvement of mission-driven and conventional developers through development agreements was essential for TOPA projects, seeing more than 70 different developers/purchasers completing or starting TOPA projects during the study period. The role of development consultants is critical for homeownership projects, where tenants purchase the building as a limited equity co-op, especially so in the absence of a developer.

Specialized financing tools, including the Housing Preservation Fund, address the unique financing challenges posed by TOPA projects. The Preservation Fund, which provides acquisition loans for affordable housing preservation, has shown effectiveness in supporting TOPA-related projects as these projects comprise 26 Preservation Fund loans, lending \$120.6 million for acquisition of 1,967 affordable units representing 84% of all funds and 89% of units funded by DCPLF. However, the challenge lies in identifying long-term affordable financing solutions to repay these loans.

Foundation grant funding and DHCD permanent financing are also crucial elements to support TOPA projects, particularly in achieving the goal of maintaining neighborhood diversity and existing communities in the face of building sales. For example, four TOPA projects with 762 units received Amazon grant funds in 2022, including projects in three different wards with four different developers.

FINDING #6:

There are major challenges that impede affordable development based on TOPA rights.

For some tenants, TOPA rights are short-circuited by misleading actors who abuse the TOPA process by pressuring tenants to sign their rights away prematurely. As reported by CBO staff, this is especially true in Wards 7 and 8, in smaller buildings and in more run-down buildings, including during the pandemic when CBO safety protocols prevented in-person visits to buildings.

Preserving affordability and improving housing conditions in small TOPA buildings (like all small buildings) is difficult because they lack economies of scale and financing tools like LIHTC, and tax-exempt bonds are usually infeasible. Since half of all TOPA cases in our study period have fewer than 15 units, the TOPA response is substantially affected by this issue.

The scarcity of affordable housing financing and the lack of predictable financing options impacts TOPA discussions and outcomes from the start. While HPTF has received significant funding recently, the scoring criteria and stiff competition in applying for funds may exclude some TOPA projects. When there are limited options for subsidy, the discussions around TOPA are affected from the outset. Residents may decide not to even form a tenant association. If they do, they may enter the search for a purchaser and negotiations understanding that their options are limited to maintaining the status quo with little chance of major repairs, or else negotiating a buyout. Lack of funds and predictability mean that there likely will be lackluster interest from nonprofit purchasers and discouragement from development partners around LECs, especially for smaller buildings.

For some tenants, TOPA rights are short-circuited by misleading actors.

Exacerbating the issue is the prioritization of funds. In recent Consolidated RFPs, the funds focused on new construction over preservation, and a large majority of the DHCD projects currently in underwriting are new construction.

Clear, accessible information is often missing for tenants receiving a TOPA notice.

Many tenants report they felt ill-equipped for TOPA from the first moment they learned about the building sale, being unfamiliar with TOPA rights or processes and having no easily accessible public information about TOPA. Lack of information about the process was a common theme among tenants and there is a steep learning curve. Tenants want training and information as early as possible, including more information about the purchaser who is typically shielded by an LLC, putting residents at a disadvantage.

FINDING #7:

The timeline to sell an occupied building is extended by approximately 5 months.

While the primary aim of TOPA is to protect tenants' rights and offer them a collective voice in housing decisions following a property sale, this does typically lead to extended timelines for property sales. **Our analysis showed that properties where a tenant association registered did take longer to sell compared to properties of similar size where tenants did not form a tenant association.** On average, properties with a tenant association take 329 days to sell, which is approximately 5.3 additional months longer than properties without tenant associations, which take 168 days, sold. Of the 351 properties with tenant associations, 67 (19.08%) sold in under 180 days and 169 (48.15%) within one year, while 309 (69.13%) of the 447 properties without TAs sold in under 180 days and a total of 378 (84.56%) sold within 360 days.

It is worth noting that the owner/3rd party timeline usually starts well before the offer of sale is provided to the tenants. When the TOPA offer is accompanied by a 3rd party sales contract (which it most often is) the purchaser has done their due diligence, commenced the search for financing, and negotiated the contract. In contrast, a tenant association is exploring the feasibility of purchase starting on Day 1 of the offer and generally needs the time allotted under the law. Despite these delays, the study recognizes the importance of TOPA in achieving its intended goals of tenant protection and involvement in housing decisions, even if it may lead to longer transaction timelines.

RECOMMENDATIONS

TOPA has facilitated a significant number of successful affordable housing preservation projects, but there may be difficulties and roadblocks ahead. These include extremely high property acquisition prices, uncertain future funding levels for the Housing Production Trust Fund, and higher interest rates (which affect affordable development just as they do market rate housing). TOPA has proven to be a powerful tool in the past but in an increasingly difficult financial environment it cannot preserve affordable housing on its own. The following recommendations are offered in that context.

RECOMMENDATION #1

Strengthening TOPA Affordable Housing Preservation through Realigned DHCD Funding Priorities

To enhance TOPA's role in preserving affordable housing, a strategic shift in D.C. DHCD funding priorities is essential. The alignment includes reinstating First Right Purchase Program (FRPP) loans and modifying scoring criteria in the Qualified Allocation Plan (QAP) to better support preservation efforts. The proposed changes involve recalibrating scoring in the QAP to prioritize preservation, and offering higher incentives for tenant associations to collaborate in affordable rental or co-op housing arrangements. Moreover, reconfiguring FRPP with a focus on small multifamily properties (5-49 units) would empower tenant organizations to preserve affordable housing through streamlined, accessible financing. This is particularly critical for projects that don't align with current funding criteria due to complexities, serving low-income tenants and requiring significant public financing. The proposal also explores an expanded land lease program to cover acquisition costs, extending this approach to smaller projects.

RECOMMENDATION #2

Safeguard Tenant Rights and Enhance Accountability through TOPA Reform

To address cases and concerns of abuse and bad actors, the District should institute a "cooling off" period before assignments, thereby preventing conflicts of interest and strengthening tenant association education through collaboration with DHCD-funded CBOs. Such a period would also aid in enhancing transparency with mandatory registration of buyouts, sale prices, and development agreements to be more in line with the spirit of TOPA. Additionally, restricting the sharing of Offer of Sale registrations to CBOs would deter predatory contact with tenants, and a standardized buyout policy with clear documentation would enhance consumer protection and formalize transactions. These measures collectively bolster TOPA's integrity and safeguard tenant interests against manipulation and coercion.

Enhancing housing code enforcement is crucial to combat subpar living conditions that often lead to tenant buyouts. By prioritizing better living conditions through stricter enforcement, tenants' incentives for buyouts can be reduced. While this study doesn't delve deeply into repair funding, it's recommended to explore this alongside enhanced enforcement to provide tenants with improved living conditions and viable housing alternatives.

RECOMMENDATION #3

Expand Access to Legal, Organizing and Technical Assistance Support

The District of Columbia should proactively invest in legal clinics and allocate increased budget support to CBOs to keep up with tenants' need for support in navigating the TOPA process. This will help foster a knowledgeable legal network to ensure and encourage comprehensive representation, especially within underserved communities, and sustain adequate tenant organizing capacity. Supportive recommendations here include exploring legal capacity-building initiatives related to TOPA and expanding TOPA technical assistance grants—with a focus on equitable representation in Wards 7 and 8—and addressing disparities in access to resources. This strategic allocation will enable effective navigation of TOPA processes, guidance for tenant rights, and vital support for affordable housing preservation.

RECOMMENDATION #4

Create and Provide Early Tenant Information and Outreach for Awareness about TOPA

To address the significant gap in tenant awareness about the TOPA process, a comprehensive strategy is proposed, combining digital tools, community engagement, and targeted education for informed tenant participation. Recommendations include revising the Offer of Sale to clarify tenant rights, creating an accessible, multi-language website offering comprehensive TOPA information and resources, and providing developer directories and buyout calculators. Community-grounded outreach pilots should provide tenant training and education in high-risk areas, leveraging broad social media campaigns and innovative public information methods to bridge information gaps. This multifaceted approach to reach tenants would help to ensure their active involvement in TOPA when the opportunity arises.

RECOMMENDATION #5

Adopt and Fund an Outcome-Focused Data Collection and Analysis Regime and Annually Publish the Collected Data

To address the lack of comprehensive data on the frequency and outcomes of tenants' use of TOPA rights, this study conducted bottom-up data collection and interviews, highlighting the need for accurate information due to persisting misconceptions about TOPA's role in affordable development. This underlines the importance of future, ongoing data tracking and analysis of TOPA for better decision-making, resource allocation, and accountability. The study recommends funding a data tracking and analysis regime within DCHD to provide the District with accurate insights into program implementation and outcomes, enabling measurement of TOPA's success and impact through clear metrics and benchmarks.

RECOMMENDATION #6

A TOPA Improvement Task Force

To enhance efficiency and effectiveness, we propose the establishment of a multi-party task force, composed of five to nine members representing various sectors, including tenants, developers (both private and non-profit), CBO representatives, TOPA attorneys, and industry experts, to enhance the efficiency and effectiveness of TOPA implementation. This task force would play a crucial role in assisting the Department in adopting the recommendations outlined in this report, while also focusing on internal process improvement for TOPA. By conducting stakeholder mapping and involving diverse perspectives, this task force aims to facilitate creative problem-solving and holistic solutions that transcend traditional approaches. Collaborative efforts among stakeholders can strengthen relationships, foster cooperation, and lead to well-informed decision-making for practical and sustainable implementation of TOPA improvements, especially when coupled with refined data-collection strategies.

CONCLUSION

For more than 40 years the Tenant Opportunity to Purchase Act has been the policy tool whereby tenants in the District of Columbia have found an effective seat at the negotiation table alongside landlords and prospective buyers to organize and advocate for housing rights amid gentrification and changing housing markets. TOPA creates a framework to organize a tenant association and guarantees sufficient time for tenants to effectively respond to an offer to purchase. This study confirms its track record of notable success.

METHODOLOGY

Data about the frequency or outcomes from tenants' use of TOPA rights has never been collected on a comprehensive basis before now. In the vacuum left by the historic lack of this information, misconceptions have persisted about TOPA's role in contributing to affordable development in the District. This study, chartered by the D.C. City Council undertook a bottom-up data gathering effort from the community organizations, attorneys, housing developers, and others who work with TOPA to document these outcomes as well as conduct extensive interviews to bolster the findings. This study aims to begin to establish a record of objective findings.

CNHED researchers and consulting contributors assembled a database of TOPA outcomes from 2006-2020 by compiling data on individual TOPA-triggering real estate transactions for 5+ unit properties. These records were first collected from public reports on weekly TOPA activity compiled by DHCD. CNHED later verified this data using DHCD's internal TOPA database. Data collected at this stage included: property offer of sale date, offer price, address, unit count, tenant association registration, and TOPA letter of interest. The database was supplemented through records maintained by CNHED partners, such as housing organizers and developers. Parcel information and deed information was logged for each property using deed lookups on the Office of Tax and Revenue Recorder of Deeds website.

Data on affordable housing funding was pulled from DHCD's Development Finance Division dashboard tool, which lists funding type and project status for DHCD projects through underwriting, construction, and completion. Data collected included funding source, project type (new construction or rehabilitation), unit count, and breakdown (including income levels). CNHED researchers used the Recorder of Deeds to note any affordable housing covenants present on properties. CNHED verified project information by using the D.C. Council's legislative information system to look up

contract and project agreements for particular projects. Address and parcel information was used to match projects in the funding database to the TOPA database.

CNHED developed a database of Housing Provider Petitions filed by property owners with DHCD to supplement analysis of TOPA data. This database was populated from two sources: bulk petitions from a FOIA request of DHCD's RAD by the Legal Aid Society, and spreadsheets provided by RAD to CNHED.

Publicly available data was added by the Urban Institute to all notices and sales, including the number of units in the property, date of sale and the purchaser, affordable housing subsidy present at the time of sale and added after a sale (including Project-Based Section 8, HPTF, and LIHTC), and whether the building became a condo.

Additional quantitative data related to these sales was collected through DHCD and public information, reviews of development agreements made between tenant associations and purchasers, and CBO and attorney files. DHCD funded CBOs which provide technical assistance to tenants, primarily Housing Counseling Services, Latino Economic Development Center, and Carecen, as well as attorneys who represent tenant associations, development consultants, housing developers, and landlords reviewed their files and development agreements to provide data on TOPA outcomes, including whether a tenant association was assisted by a CBO, assigned its rights, whether affordability was maintained, lost, or added, and the use of buyouts. Data on voluntary agreements and hardship petitions were also matched to sales. Tabulations of the data used in this report were produced by Urban Institute or by other members of the project team using data compiled by Urban Institute.

Through this method, we were able to collect information on an overwhelming majority of TOPA sales where a tenant association registered their interest (83%, 354/425 sales) representing 22,394 units. The study only lacks data for 71 sales, with 872 units, where tenant associations registered their TOPA interest. The study also has technical assistance provider data on a much smaller percentage of buildings where tenants did not register a tenant association/ letter of interest to participate in the TOPA process.

The qualitative data were collected through interviews with 24 individuals representing 14 organizations, including five mission driven developers, three for-profit, non-mission-driven developers and three legal services providers. The



All interviews were conducted anonymously. Interviewees were strategically selected to include a range of experiences and sectors working with TOPA.

team also conducted three focus groups with a total of 21 residents that had gone through a TOPA process. Two focus groups were in-person located in community-based organization offices in Wards 1 and 8, respectively. A final focus group was conducted via Zoom. Interpretation services were offered for all three focus groups. The residents represented tenant associations that had purchased their building, those who assigned their rights and preserved affordability, those who were unable to choose a developer, and those who were in the middle of a TOPA process.

All interviews were conducted anonymously. Interviewees were strategically selected to include a range of experiences and sectors working with TOPA. Interviews were recorded, transcribed and analyzed for common themes both within groups and across groups to develop findings. Quotes were used in the findings to encapsulate what was said by multiple participants.

A comprehensive legislative, regulatory, legal, and policy history of TOPA and its antecedents (1975-2021) was conducted by researchers reviewing D.C. legislative, regulatory, and policy documents, as well as court records, media reports, and other pertinent information. This component of the research can be found in Appendix C at the end of this report.

BACKGROUND



Capital Park Towers

The Tenant Opportunity to Purchase Act (TOPA) represents a significant and innovative piece of legislation in the District of Columbia aimed at addressing the intricate balance between the property rights of landlords and the housing security of tenants. Enacted in 1980 as Title IV in the Conversion and Sale Act, TOPA holds a prominent place in the landscape of tenant protections and housing preservation strategies in the nation's capital. This comprehensive legislation was created in response to the complex challenges posed by gentrification, displacement, and escalating housing costs that were adversely impacting the city's lower-income and marginalized communities⁴. By offering tenants an opportunity to purchase when their rental property is slated for sale, the goals of the legislation are to uphold the principles of housing security, tenant empowerment, and affordability preservation. That TOPA has been looked to as a model for other cities in the D.C. region and throughout the country to establish their own tenant purchasing opportunity laws also speaks well of TOPA's long-term effectiveness as smart housing policy⁵.

TOPA has given tenants in the District an opportunity to have a say, and to have leverage, in what happens to the property they live in when it goes up for sale. In practice, tenants have been able to negotiate rent protections, advocate for needed repairs, decide to collectively purchase and, often, ensure they can continue living in their housing and community through rapid development and gentrification. It is effective because of an ecosystem of support, including other tenant protections⁶.

³ The Conversion and Sale Act succeeded a similar provision in Section 602(b) of the Rental Housing Act of 1977. See Comments on Proposed Bill, March 11, 1980, included as an attachment to the 1980 Committee Report.

⁴ Amanda Huron, "Creating a Commons in the Capital: The Emergence of Limited-Equity Housing Cooperatives in Washington, D.C.," *Washington History* 26, no. 2 (2014): 56–67; Kathryn Howell, *Affordable Housing Preservation in Washington, DC: A Framework for Local Funding, Collaborative Governance, and Community Organizing for Change*. (Routledge, 2021).

⁵ Local Housing Solutions: Rights of First Refusal: <https://localhousingsolutions.org/housing-policy-library/rights-of-first-refusal/>

⁶ Kathryn Howell, "Preservation from the Bottom Up: Preservation from the Bottom Up: Affordable Housing, Redevelopment, and Negotiation in Washington, DC.," *Housing Studies* 31, no. 3 (2016): 305–23.

Historical Context and Creation of TOPA

In the late 1970s and early 1980s, the District of Columbia began to undergo a gradual transformation driven by urban renewal and revitalization initiatives. Amid these changes, long standing residents—often from marginalized communities—found themselves vulnerable to displacement due to property sales, renovations, and development projects. As certain neighborhoods gentrified and property values surged, lower-income tenants faced the stark reality of being priced out of their own communities. In this context of growing inequality and housing insecurity, the District of Columbia City Council recognized the urgency of intervening to protect tenants' rights and to safeguard affordable housing units.

The Tenant Opportunity to Purchase Act emerged as a legislative response⁷ to these challenges. Enacted in 1980, TOPA was crafted to empower tenants with a voice in the fate of their homes, granting them the opportunity to participate in decisions affecting their housing security. By introducing a mechanism that allowed tenants to match a third-party purchase offer, TOPA sought to align the rights of tenants with the interests of property owners while upholding housing stability and affordability as paramount values.

TEXT OF TOPA LAW

DC Code § 3401.02 (current language) states the purposes of Tenant Opportunity to Purchase as follows:

- “(1) To discourage the displacement of tenants through conversion or sale of rental property, and to strengthen the bargaining position of tenants toward that end without unduly interfering with the rights of property owners to the due process of law;
- “(2) To preserve rental housing which can be afforded by lower income tenants in the District;
- “(3) To prevent lower income elderly tenants and tenants with disabilities from being involuntarily displaced when their rental housing is converted;
- “(4) To provide incentives to owners, who convert their rental housing, to enable lower income non-elderly tenants and tenants without disabilities to continue living in their current units at costs they can afford;
- “(5) To provide relocation housing assistance for lower income tenants who are displaced by conversions;
- “(6) To encourage the formation of tenant organizations;
- “(6a) To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement; and
- “(7) To authorize necessary actions consistent with the findings and purposes of [the Act].”

Key Objectives of TOPA

TOPA is rooted in a set of fundamental objectives that underscore its significance and impact within the District's housing landscape:

- 1 Preservation of Affordable Housing:** A primary goal of TOPA is to counteract the erosion of affordable housing units in the District. As property values soar and rents escalate, residents are confronted with the prospect of displacement and homelessness. TOPA's mechanisms aim to preserve the availability of affordable housing by offering tenants an opportunity to purchase their housing, partner, or assign their rights to another party who will preserve the housing as affordable.
- 2 Mitigation of Tenant Displacement:** The purchase opportunity granted by TOPA empowers tenants to counteract the effects of displacement. When a property changes hands, tenants may be at risk of housing instability due to rent increases or management and maintenance changes with new ownership. TOPA's provisions serve as a barrier against such displacement, ensuring that tenants have the option to retain their homes even amidst property sales.
- 3 Tenant Empowerment and Engagement:** TOPA is predicated on the principle of tenant empowerment and participation. By forming tenant associations and engaging in negotiations, tenants gain a platform to influence the trajectory of their housing. This empowerment aligns with broader goals of community engagement and democratic decision-making.

⁷ The Conversion and Sale Act has five titles: Title I, Purposes and Definition; Title II, Condo & Cooperative Conversions; Title III, Relocation; Title IV, TOPA; Title IV-A, DOPA (see within); and Title V, Enforcement and Interpretation. This review focuses primarily on Title IV, TOPA, with some discussion of DOPA.

Mechanisms and Operation of TOPA

The Tenant Opportunity to Purchase Act best functions through a structured process⁸ designed to enable tenants to choose a purchaser when the property is being sold. This process encompasses various stages:

TOPA PROCESS TIMELINE AS PROVIDED IN THE LAW

Initial Organizing 45 Days

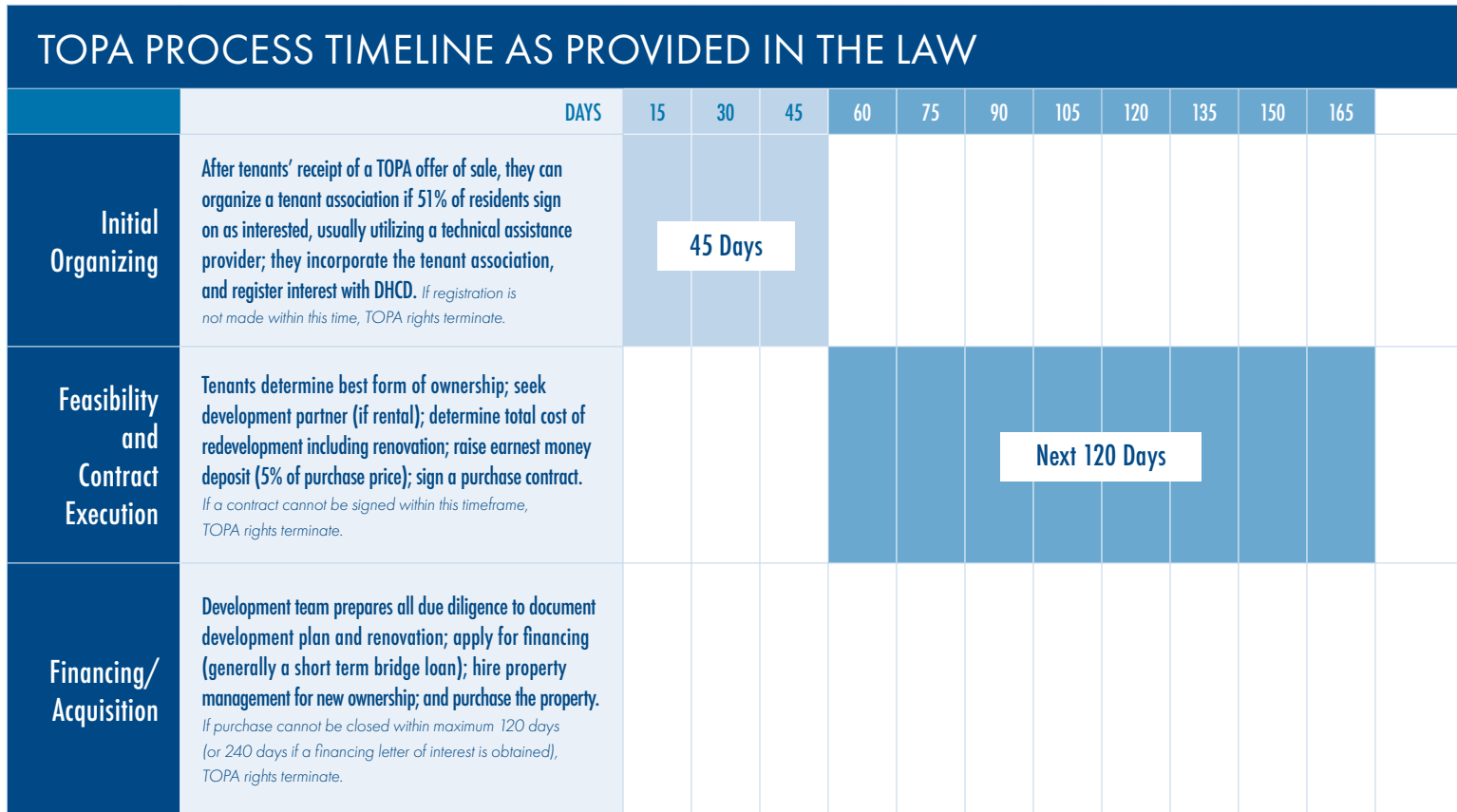
After tenants' receipt of a TOPA offer of sale, they can organize a tenant association if 51% of residents sign on as interested, usually utilizing a technical assistance provider; they incorporate the tenant association, and register interest with DHCD. *If registration is not made within this time, TOPA rights terminate.*

Feasibility and Contract Execution Next 120 Days

Tenants determine best form of ownership; seek development partner (if rental); determine total cost of redevelopment including renovation; raise earnest money deposit (5% of purchase price); sign a purchase contract. *If a contract cannot be signed within this timeframe, TOPA rights terminate.*

Financing/Acquisition Next 120-240 Days

Development team prepares all due diligence to document development plan and renovation; apply for financing (generally a short term bridge loan); hire property management for new ownership; and purchase the property. *If purchase cannot be closed within maximum 120 days (or 240 days if a financing letter of interest is obtained), TOPA rights terminate.*



(chart continued on page 19)

⁸ <https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/TOPA%20-%205%20or%20More%20Units%20%28FINAL%29.pdf>

HOW DOES RENTAL ASSIGNMENT WORK?

After a TA completes its initial registration in response to a TOPA Notice from the landlord who is selling, it may determine that staying rental is the preferred and/or most feasible option. Working with a tenant organizer and lawyer, tenant associations often put out requests for proposals that state their primary goals. They then evaluate the merits of these proposals and any third-party purchaser which already has a contract. Developers that the TA is interested in will then submit offers and negotiate to partner with the tenant association. The TA can then select among bidders, including the third-party, to collaborate toward the most advantageous redevelopment plan. The most common outcome of rental assignments is continued rent control with specific improvements to housing conditions.



Ft. Chaplin Park

	180	195	210	225	240	255	270	285	300	315	330	345	360	375	390	405	DAYS	
																		Initial Organizing
																		Feasibility and Contract Execution
																		Financing/ Acquisition

Next 120-240 Days

The Roles of Community Based Organizations

Community Based Organizations (CBOs) serve as essential intermediaries, advocates, educators, and facilitators within the TOPA process, working to ensure that tenants are empowered to exercise their rights, navigate the complexities of property transactions, and preserve affordable housing options. Their involvement spans from raising awareness and educating tenants about their rights to offering technical assistance throughout the entire TOPA process. Around 2004, the District began allocating federal Community Development Block Grant (CDBG) funds to CBOs to provide organizing and technical assistance to support residents receiving TOPA notices.

The CBOs are at the forefront of raising awareness about TOPA by conducting outreach through workshops, community meetings, informational materials, and direct engagement with tenants to provide information about the steps involved in the TOPA process and empower tenants with the knowledge they need to make informed decisions about their housing options. They help tenants navigate negotiations with property owners, understand purchase terms, address legal or financial questions, and connect tenants with attorneys and development consultants. They

help tenants assess the feasibility of purchasing, and facilitate communication between tenants and property owners. This capacity-building aspect is especially important for tenants who might lack experience in property transactions and negotiations.

CBOs act as advocates for tenant rights within the TOPA process. They ensure that tenant voices are heard and that tenants are not subject to coercion or undue pressure during negotiations. Importantly, these organizations often prioritize equity and inclusion in their work within the TOPA framework. They strive to ensure that all tenants, including historically marginalized communities, have equal access to information, resources, and opportunities to participate in the TOPA process.

Additionally, CBOs collaborate with other stakeholders, including legal clinics, affordable housing advocates, and government agencies, to create a comprehensive support system for tenants within the TOPA process. This collaborative approach enhances the overall effectiveness of TOPA implementation and ensures tenants have access to a wide range of resources and expertise.

Challenges to TOPA

While TOPA's intent is to protect tenants and promote affordable housing preservation, it has also prompted criticism and challenges within the real estate industry. Property owners/ developers in interviews regularly raised concerns around TOPA-related delays and their financial implications, and unreasonable tenant demands in negotiations. On the other hand, there have been instances where property owners/developers have attempted to exploit gaps in the legislation to avoid TOPA requirements or circumvent the process altogether.

These dynamics underscore the ongoing need to strike a balance between tenant protection, property owner rights, and housing affordability. Addressing the concerns of property owners while upholding TOPA's core principles necessitates an ongoing dialogue that seeks to refine and adapt the legislation to the evolving needs of a complex urban environment.

Established Exemptions from TOPA

As lawmakers have tried to balance landlord and tenant interests, current law clearly names many sales contexts which are exempt from TOPA requirements (though in some cases these are subject to manipulation and abuse and may be contested). These clarifications evolved in amendments to the TOPA statute, notably in 1995, 2005, and 2020. Exemptions include:

- Transfers to immediate family members and transfers from an estate to a surviving family member
- Transfers resulting from loan foreclosures and establishing a deed of trust itself
- Tax sales and tax foreclosure sales
- Bankruptcy sale
- Change in form of entity, so long as no consideration is exchanged
- Transfers of interests to secure or recapitalize LIHTC investments (including admitting replacement investors) (adopted in December 2020)
- Transfer pursuant to court order or court-approved settlement
- Transfers pursuant to exercise of eminent domain

FINDINGS

To quantify the impact of TOPA, this study analyzed 937 sales of multifamily properties (five or more units) with 37,471 units that resulted with offers of sale during a 15 year period from 2006-2020. The study began with a review of 1,008 sales notices issued to tenants living in multifamily rental properties with five or more units under TOPA during this 15 year period.⁹ The analysis excludes “duplicate” notices that did not result in a sale or other outcome before another notice was issued. Since 6% of notices did not lead to a sale by March 2023, the analysis narrowed to 937 sales. This period saw a large volume of apartment building sales transactions with these TOPA sales representing fully 30% of the total D.C. multifamily housing stock turning over.¹⁰

This study sought to explore whether and how TOPA is meeting the goals of the intent of the Act. Though not successful 100% of the time, adding TOPA requirements to the sales process has undoubtedly contributed to preserving thousands of affordable housing units. TOPA works with other federal and local supports to preserve affordability, and those resources are essential to its success. But it’s the TOPA law that provides the timeframe in which tenants can organize and respond to an offer of sale—a crucial component since deploying preservation funding takes time.

D.C. Code § 3401.02 states the purposes of the Conversion and Sale Act as follows:

- “(1) To discourage the displacement of tenants through conversion or sale of rental property, and to strengthen the bargaining position of tenants toward that end without unduly interfering with the rights of property owners to the due process of law;
- “(2) To preserve rental housing which can be afforded by lower income tenants in the District;
- “(3) To prevent lower income elderly tenants and tenants with disabilities from being involuntarily displaced when their rental housing is converted;
- “(4) To provide incentives to owners, who convert their rental housing, to enable lower income non-elderly tenants and tenants without disabilities to continue living in their current units at costs they can afford;
- “(5) To provide relocation housing assistance for lower income tenants who are displaced by conversions;
- “(6) To encourage the formation of tenant organizations;
- “(6a) To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement; and



- “(7) To authorize necessary actions consistent with the findings and purposes of [the Act].”

Based on this analysis, both quantitative and qualitative, the study’s major findings are as follows:

- TOPA is fundamentally successful in offering tenants a seat at the table in negotiations over sale of their building.
- TOPA made a meaningful impact on improving the District’s affordable housing stock and reducing displacement, especially in the more recent years.
- TOPA negotiation allows tenants to shape development outcomes to achieve tenant goals related to renovation, affordability, and homeownership.
- Tenant buyouts are sometimes an outcome, but buyouts of an entire building are rare.
- TOPA relies on a support infrastructure of tenant organizers, technical assistance providers, attorneys, developers, and flexible financing tools.
- There are major challenges that impede affordable development based on TOPA rights.
- The timeline to sell an occupied building is extended by TOPA.

FINDING #1

TOPA MADE A MEANINGFUL IMPACT ON PRESERVING THE DISTRICT'S AFFORDABLE HOUSING STOCK, IMPROVING HOUSING CONDITIONS, AND REDUCING DISPLACEMENT, ESPECIALLY IN MORE RECENT YEARS.

Arguably, the most impactful goal of the TOPA statute is to “discourage the displacement of tenants through conversion or sale of rental property.” Our study shows that **TOPA facilitated preservation or redevelopment of 18,399 units through assignment of rights and enabled tenant purchase of 771 cooperative units**¹³ when TAs took the next steps after registering their association. The most frequent outcome of TOPA was negotiation and an agreement between the tenant association and purchaser providing for continued rent control and modest upgrades without major redevelopment or public subsidy.¹⁴

As tenant associations engage in the development process, either for rental or homeownership, “they are thinking of buildings in terms of home and not as real estate,” notes a long-time D.C. community lender. At the same time, they go on to state that tenants’ interest in staying in place, especially for a co-op purchase, “is often a harbinger of a neighborhood’s potential for development.”

Tenant associations opting to stay as rental have engaged a wide range of both mission-driven and conventional developers to use TOPA assignments of rights, with **more than 70 different developers/landlords** negotiating with tenants and receiving an assignment of rights. There are 16 developers who have worked on four or more TOPA assignments during this period,¹⁵ developing specialization and expertise, thus creating a major line of business.

Once tenant associations form, they will explore their options. TAs often put out a request for proposals and then interview developers who can match their goals. For TOPA projects which are attractive in their location and scale, there are often multiple offers from competing developers interested in working with tenants. As one for-profit developer explained:

“We asked the residents one day to come see our other properties, so in this case two properties across the street... generally, we have properties fairly close. They

know who we are. We try to understand what their likes and dislikes are of the current property, and get them engaged in what they'd like to see happen to the property, and the first thing we assure them is that, look, this is a rent control property. We have no intention of coming in and raising the rent.”

Myth vs. Reality: Collective Purchasing

URBAN MYTH

Through TOPA, tenants pool their money and purchase the property as homeowners.



REALITY

95.5% of the housing units preserved or redeveloped through TOPA remain rental. The D.C. statute was amended in 1995 to codify tenants’ ability to assign TOPA rights to a developer. Tenant associations typically negotiate with potential developers and then sign a contract which codifies agreements about rents and renovation/repair and assigns their TOPA rights to the buyer.

When a tenant association registered to exercise their TOPA rights, 72% of the time they either negotiated and assigned their rights or purchased as a condo or co-op. Looking at the number of units, this corresponds to 82% of units in TOPA sales where tenant associations successfully participated to achieve a desired outcome.

Among all 425 properties where a tenant association registered interest in purchasing, there were 269 properties where the TA assigned rights to a rental developer, and 39 properties where tenants purchased as a co-op or condominium, for a total of 72% of properties where tenant associations proactively negotiate.

¹³ All counts relate to TOPA notices issued from 2006-2020, though project acquisition may have occurred later. These are not 100% affordable. Tabulation of rental redevelopment cases is based on a sale having occurred accompanied by a legal assignment of tenants’ rights to the purchaser, and for co-ops and condos the resident group has purchased with a homeownership legal structure. The full developments may not have been completed by 2023.

¹⁴ Based on project survey results showing continued rent control as the primary affordable outcome.

¹⁵ These most active developers include: E&G, Jubilee Housing, Lock 7, Manna Inc., MED, Mi Casa, National Housing Trust, NHPF, Ray Nix, NOVO, Wm. C Smith, Somerset, UIP, VanMetre, Wesley Housing, and Wexford.

The unit count of tenant-sponsored developments is 18,399 (shown in Table 4) plus an additional 771 co-op units. Together these 19,170 units comprise 82% of all units included in TA TOPA registrations and 51% of the entire number of units sold in our study period (37,471 units).

TABLE 3: RE-CAP OF TA ASSIGNMENTS/PURCHASE

Total units sold after TOPA notice	37,471
<i>Of these, # with TA registrations</i>	23,266
<i>Of these, # with TA negotiation of assignment + co-op/condo purchase</i>	19,170

Upturn over time: Just as the organizing of tenant groups increased during the 2006-2020 period, so did the pace of assignments of rights. There is a marked difference between the earlier and later years in the number of assignments. Looking at the three 5-year periods, the total number of assignments was only 41 in 2006-2010, rising to 115 in the 2011-2015 period and 119 in the final five years. Factors that likely contributed to this include increases to the HPTF and other financing to support TOPA deals, tenants' awareness of rising housing costs, and the city's growing affordable housing crisis, and the increasing capacity of community based organizations to support tenant organizing.



TABLE 4: RESIDENTIAL UNITS IN PROPERTIES WHERE TENANTS ASSIGNED RIGHTS

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	18,399	413	431	360	611	1,291	1,093	1,861	2,448	1,642	1,894	1,438	2,099	1,742	543	533
Ward 1	3,192	-	-	284	197	448	174	801	170	159	114	35	501	239	37	33
Ward 2	2,014	173	89	63	-	565	160	215	25	113	10	171	162	98	42	128
Ward 3	892	-	-	-	-	74	95	-	251	103	-	18	100	251	-	-
Ward 4	2,678	54	245	-	244	59	313	375	154	147	164	259	192	297	157	18
Ward 5	979	-	-	13	116	-	118	-	-	106	167	93	66	74	122	104
Ward 6	2,533	-	-	-	6	41	204	416	256	643	14	410	72	288	27	156
Ward 7	1,936	68	97	-	48	68	-	28	82	36	889	149	110	292	38	31
Ward 8	4,175	118	-	-	-	36	29	26	1,510	335	536	303	896	203	120	63

This table, and the related numbers in the document, includes six properties where there was a negotiated assignment but no documented tenant association registration.

Trends by Ward: Tenant associations in three wards were the most likely to assign their rights to a partner; these overwhelmingly continued as rentals:

- **Ward 8:** 4,175 units with rights assigned
- **Ward 1:** 3,192 units with rights assigned
- **Ward 4:** 2,678 units with rights assigned

These three Wards accounted for 55% of all units assigned citywide based on the 15 years of notices. These wards also had the highest share of total sales that resulted in a TA assignment: 57% for Ward 8, 56% for Ward 4, and 54% for Ward 1. These wards include neighborhoods where property valuations were more moderate during this period, but rapidly increasing thereby necessitating preservation, as well as featuring a preponderance of medium-sized and larger scale rental properties overall. The application of TOPA assignments in Ward 8 showed the most notable increase during this period, as very little TOPA assignment activity occurred in 2006-2010 (only 24% of units sold resulted in such assignment). But a marked uptick began in 2013 and continued, such that in 2011-2020 there was an assignment of an average of 404 units per year for ten years, equivalent to 60% of total units sold with a TOPA notice. This increase corresponds to the increasing desirability of Ward 8 for housing development, more investment and development activity in this part of the city, and the related need for housing preservation.

Affordability: The large majority of tenant-negotiated projects were affordable to low- and moderate-income residents. For this question, our analysis counted affordability based on the

There were 16,224 affordable rental and co-op units in projects connected with a tenant TOPA response—equivalent to 70% of all TOPA-registered units.

use of subsidy programs such as LIHTC, project-based Section 8 or Housing Production Trust Fund, extension of rent control, or creation of a limited equity co-op. (Rent control provides a measure of predictability in rent increases and, often, affordability below the market without a public subsidy.) **There were 16,224 affordable rental and co-op units in projects connected with a tenant TOPA response—equivalent to 70% of all TOPA-registered units.**

TABLE 5: AFFORDABLE UNITS IN PROPERTIES WHERE TENANTS ASSIGNED RIGHTS OR BOUGHT AS CO-OP WITH AFFORDABILITY ADDED OR PRESERVED

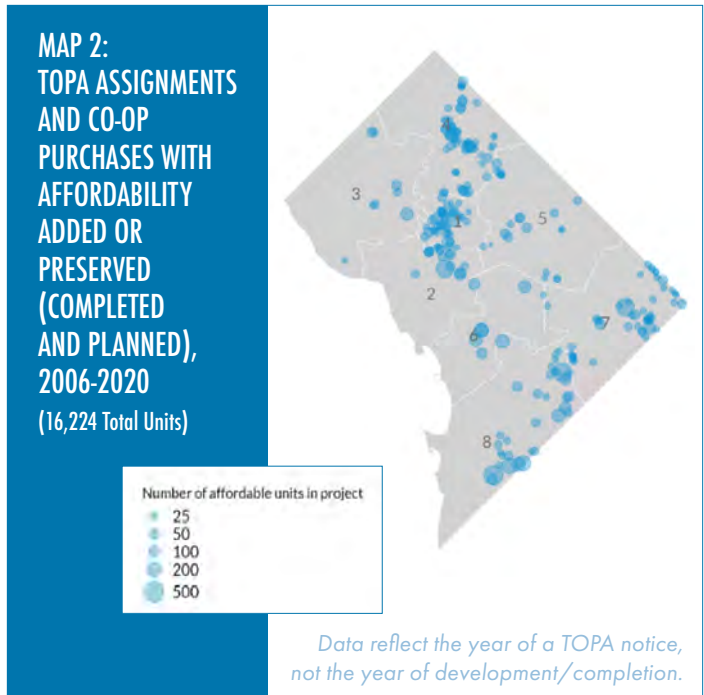
	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	16,224	536	543	296	537	1,257	1,068	1,488	2,397	908	1,907	1,305	1,751	1,474	415	342
Ward 1	2,499	-	21	189	150	457	147	457	86	96	86	35	486	227	29	33
Ward 2	1,941	173	170	63	-	565	160	215	25	-	10	171	152	67	42	128
Ward 3	589	-	-	-	-	74	95	-	251	103	-	7	-	59	-	-
Ward 4	2,671	69	245	31	244	59	358	354	154	232	196	272	54	297	88	18
Ward 5	880	-	-	13	95	-	104	-	-	106	159	93	59	53	110	88
Ward 6	1,441	-	10	-	-	-	204	416	256	-	-	267	-	288	-	-
Ward 7	2,052	162	97	-	48	66	-	28	91	36	920	157	110	280	26	31
Ward 8	4,151	132	-	-	-	36	-	18	1,534	335	536	303	890	203	120	44

Data includes properties acquired where affordability is in place or is planned, and are tied to the year of the TOPA notice, not the development, affordability through LIHTC, Section 8 or other project-based, rent control, or LE coop. This counts several properties sold twice during the period.

Tenants utilized TOPA to preserve and increase housing subsidized through LIHTC: **Through TOPA, LIHTC was maintained or added in 101 properties with a total of 7,774 units.**¹⁶ This includes 76 properties where LIHTC was newly added for 4,299 units. **Tenants registered as a tenant association in 89% of LIHTC-related sales and worked with a CBO and negotiated an assignment that would provide LIHTC for the property in 84% of these sales.** When LIHTC was added there were just six sales where a tenant association did not register.

DHCD’s Housing Production Trust Fund was used in a significant number of TOPA projects. There were **3,620 units in 60 projects** with HPTF loans in sales where tenant associations organized, many of which are included in the LIHTC count above as these programs were used in tandem. *(For more detail, see Tables in Appendix B.)*

It is also notable that affordability can be preserved in certain properties where tenants do not exercise TOPA rights. In an additional 20 properties with 1,885 subsidized affordable housing units which sold after a TOPA notice, tenant associations did *not* organize. This includes a number of existing subsidized or special needs properties that went through a resale process but where it appears tenants were not motivated to organize because they were protected by ongoing affordability. These were not TOPA-registered units but they continue to contribute to the District’s affordable rental stock. The following table shows the total number of affordable units in all TOPA properties, including those where tenants assigned their rights, those with subsidy but no tenant action, and new co-ops.



TOPA creates new affordable housing: Several TOPA projects in our study added newly constructed affordable units with increased site density, illustrated in several case studies. (Belmont Crossing, Lock 7-Georgia Ave, Congress Heights Metro.) Together these created or plan to create 605 added affordable units (not reflected in the TOPA totals above).

TABLE 6: TOPA DEVELOPMENTS ADDING MORE UNITS OF AFFORDABLE HOUSING WITH NEW CONSTRUCTION

Project	Existing Units	Future Units	# Added Units
Belmont Crossing, Phase 1 & 2	188	393	205
Congress Heights Metro Redevelop.	59	179	120
Elm Gardens	36	110	74
The Faircliff	80	125	45
1 Hawaii Avenue	34	70	36
Portner Flats	48	56	8
Ridgecrest Phase 2	64	128	64
7428 Georgia Avenue	13	66	53
Total Incremental Units			605

Source: DHCD financing data, developer press releases; includes past, current and planned projects

¹⁶ These numbers for LIHTC properties count affordable units in each transaction; of these, there were six properties that sold twice during the study period.

CASE STUDY 1

Congress Heights Metro Project

Tenants Avoid Displacement in Ward 8

LOCATION

1331-33 Alabama Ave SE et al.
Congress Heights – Ward 8

UNITS

59 existing replaced by 179 new

DEVELOPERS

National Housing Trust and Standard Real Estate

TOPA NOTICES

8/11/21 plus several in preceding years;
Acquisition: 1/6/22; construction: TBD



Photo Credit: Rodney Choice/Choice Photography

GOALS ACHIEVED

Long-time residents faced down displacement by a developer seeking to demolish their homes and build a luxury apartment-office complex, and instead won a deal to build 179 new affordable apartments immediately adjacent to the Congress Heights Metro. Tenants used their TOPA rights in conjunction with a years-long public protest against the developer and a legal campaign by the D.C. Office of Attorney General over poor housing conditions as OAG sought to “hold unscrupulous landlords accountable.”

TENANT ASSOCIATION INVOLVEMENT

Tenants persevered through a difficult 5+ year ordeal, rejected substantial buyout offers and kept their focus on their affordable redevelopment goal. The previous owner engaged in a campaign to displace existing tenants through extreme disinvestment, as tenants at times lacked heat or hot water, suffered from rodents and trash accumulation, and even had their building entry door removed so that drug dealers could intimidate them. While in 2010, 46 units were occupied (in the Alabama Avenue property), by 2020 fewer than 20 units were occupied.

TOPA first played a role in 2017, when the court ordered the then-owner to negotiate a sale of the building to the tenants under TOPA, but the owner “arranged a covert transaction to transfer ownership of the complex in violation of the Court’s order,” according to the OAG press release. This was

challenged in a lawsuit by the tenant association, which was resolved in a January 2022 master settlement with the TA and OAG.

The tenant association registration of TOPA rights in 2017 and again in 2021 ensured that they could select new developer partners and deliver site control by assigning their rights. The extensive legal challenges required extraordinary assistance for the tenant association from public interest lawyers, including the Washington Legal Clinic for the Homeless, and organizing support from Housing Counseling Services, ONE DC, and others.

FINANCING SUMMARY

The plan for 100% affordable housing will require low-interest financing through DHCD’s HPTF as well as other subsidies. An application for DHCD funding was approved for further underwriting as of August 2022.

CASE STUDY 2

1460 Euclid St

Avoiding Displacement in Ward 1

LOCATION

1460 Euclid St NW
Columbia Heights – Ward 1

UNITS

33 units originally, to become
25 larger units after renovation

DEVELOPER

Jubilee Housing

TOPA NOTICES

12/14/17; Acquisition: 10/29/18
Renovation: Ongoing in 2023



🎯 GOALS ACHIEVED

Tenants were living in a half-vacant deteriorating building in 2017 where the landlord actively encouraged move-outs to achieve a vacant building, but they were able to avert displacement by assigning their TOPA rights to a non-profit developer in 2018. The negotiated development agreement guaranteed all residents the right to return to a fully renovated building after temporary relocation, at the same affordable rents subject only to inflation/rent control increases. The mostly Latinx tenant group will be able to live permanently in this increasingly expensive area across from Meridian Hill Park.

🔑 TENANT ASSOCIATION INVOLVEMENT

Working with organizers at the Latino Economic Development Center and the TA attorney, these low-income families assessed their TOPA rights and determined that a rental assignment was the most feasible option. Part of that calculus was that building conditions were so poor, tenants needed to move out immediately after the purchase, which was facilitated by tapping into Jubilee Housing's available units nearby. Tenants with larger families will also be accommodated with reconfiguration to larger units as part of the renovation.

💰 FINANCING SUMMARY

The project is utilizing a DHCD HPTF loan of approximately \$8 million (a portion of a larger loan) as well as LIHTC equity. As a smaller size preservation project, Euclid Street was bundled by Jubilee Housing to be financed jointly with its Kalorama Street building to create a more viable size project. Initial acquisition financing included a Housing Preservation Fund loan of \$1.7 million.

CASE STUDY 3

Belmont Crossing

Ward 8 TOPA Preservation and Affordable Housing Development

LOCATION

26 buildings in Washington Highlands, Ward 8 (4201-4237 7th St, SE; 4242-4386 7th St, SE; 4233-4373 Barnaby St, SE)

UNITS

169 units in Phase 1; 224 additional units planned Phase II, possible Phase III

DEVELOPERS

Gilbane Inc., EquityPlus, Housing Help Plus, MED

TOPA NOTICES

TOPA offer: 8/16/17; acquisition: 4/13/18;

Construction of Phase 1: Jan. 2023 – April 2025



GOALS ACHIEVED

Demolishing 13 deteriorated buildings to construct a larger building to house 169 units (with approximately 340 more units to come in Phases 2 and 3), with 100% affordability and no permanent displacement. After negotiating an agreement with the tenant Association, the developers went through a successful rezoning process in 2020 to increase the density allowed. The new building in Phase 1 will feature about a third of the units as larger units with 3- or 4- bedrooms.

TENANT ASSOCIATION INVOLVEMENT

The property was previously owned by Sanford Realty and suffered from serious maintenance issues and other problems. Sanford was under substantial pressure from

the City to sell the property. In 2017, the tenant association was approached by MED and the TA and MED agreed to work together. Once Sanford sent a TOPA offer, the TA assigned its TOPA rights to MED. MED brought in TM and EquityPlus as partners and acquired the property in 2018 (TM was later bought out and replaced by Gilbane). After a year of ownership, the developers realized that the buildings were too deteriorated to rehabilitate and developed a plan to demolish them and construct new buildings. The TA participation has been extensive throughout. The TA has met at least monthly with the developers since they first acquired the property. The TA participation extended to weighing in with the Advisory Neighborhood Commission and D.C. zoning board to support the rezoning request and also included detailed negotiation of temporary onsite and offsite relocation terms.

FINANCING SUMMARY

Financed during a rising interest rate environment, Phase 1 of the project utilized a typical combination of a tax-exempt bond loan, LIHTC equity, and Housing Production Trust Fund (\$43.8 million loan), but also raised capital by selling the underlying land to the District.

AFFORDABILITY

A majority of units will be affordable to households below 50% of area median (AMI). All current tenants in good standing on rent who wish to return are being relocated off site and will move back into the new units, with rents capped at current levels, and any future increases in correspondence with D.C. rent control.

CASE STUDY 4

1111 Massachusetts Ave NW

Preservation of Affordable
Rental Housing Downtown

LOCATION

1111 Massachusetts Ave NW
Mt Vernon Square - Ward 2

UNITS

160

DEVELOPER

National Housing Trust

TOPA NOTICES

3/4/16; Acquisition: 4/28/17; renovation: 2018



GOALS ACHIEVED

Preservation and upgrades to 160 units of affordable housing in downtown D.C. This property is home primarily to a Latinx immigrant population, many of whom work at hotels and restaurants downtown. Continuing to house these families at affordable rents helps to maintain diversity in Ward 2, where the overall population has a median household income of \$118,015.

TENANT ASSOCIATION INVOLVEMENT

The tenant association was very engaged in negotiating this 2017 TOPA acquisition based on their successful engagement in a 2011 TOPA assignment and sale. The association looked for an owner they could trust to maintain the property as affordable, carry out renovations, and introduce more responsive property management. Given that the 2011 redevelopment included many in-unit renovations, the tenants and their chosen purchaser, NHT, focused on rehab related to building systems and improved amenities. The association collaborated to orchestrate the major systems replacements. LIHTC affordability guarantees for households up to 60% of AMI were extended.

FINANCING SUMMARY

The tenant association obtained a \$1.1 million loan from the Institute for Community Economics in order to cover the earnest money deposit required by the contract. After assignment of the contract to NHT, NHT assembled short-term financing to cover the acquisition in May 2017 and then a package of permanent financing closed in December. That included tax exempt bond financing, LIHTC equity, and a \$10.5 million loan from the Housing Production Trust Fund.

CASE STUDY 5

Beech Tree Place 7428 Georgia Ave

New Construction of Added Units

LOCATION

7428-34 Georgia Ave NW – Shepherd Park Ward 4

UNITS

Formerly 13, to be 66

DEVELOPER

Lock 7 Development

TOPA NOTICES

Acquisition: 2014; TOPA raze notice: 10/4/19
new construction: 2023



🎯 GOALS ACHIEVED

The tenant association negotiated for permanent housing in a new building to replace their original homes, including guarantees to continue at their existing rents with future increases limited by rent control rules. A majority of the tenants are Latino and will avoid displacement from this desirable area. The neighborhood will benefit from a new larger 66-unit all-affordable building replacing the former deteriorated ones, developed by Lock 7, a “boutique real estate development firm” which primarily works in market rate housing.

🔑 TENANT ASSOCIATION INVOLVEMENT

The tenant association responded in 2019 to a “Raze Notice” wherein a proposed demolition triggers the same TOPA rights as a property sale. While the developer planned a full buyout of all tenants in order to demolish the buildings, the tenants’ tenacity to resist buyouts led the developer to incorporate them into an affordable LIHTC-funded project. Working with Housing Counseling Services and a pro bono attorney, the association negotiated a development agreement in 2021, with arrangements for temporary relocation in the same vicinity.

💰 FINANCING SUMMARY

The project was selected in DHCD’s competitive HPTF funding round in March 2021 and received an \$11.2 million low-interest loan in FY2022, in addition to planned LIHTC equity. All units are to be affordable to households with incomes at or below 50% of area median.

FINDING #2

TOPA IS FUNDAMENTALLY SUCCESSFUL IN OFFERING TENANTS A SEAT AT THE TABLE IN NEGOTIATIONS OVER SALE OF THEIR BUILDING.

One of the stated goals of the TOPA statute was to “encourage the formation of tenant associations,” and it certainly has done so. These associations, when properly established, can give tenants an organized, democratic voice in the management and development of the buildings where they live.

In buildings representing 45% of the properties and 62% of the units sold, 425 tenant associations did take the first step and **register** the tenant association and its statement of interest in purchasing. To take this step tenants must form a

TOPA has been getting more effective over time.

TABLE 1: PROPERTIES WITH TENANT ASSOCIATION REGISTERED, FOR NOTICES 2006-2020

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	425	19	20	11	13	18	32	32	37	37	36	30	27	52	34	27
Ward 1	74	-	2	5	5	9	8	10	8	9	4	1	5	4	3	1
Ward 2	37	2	3	1	1	2	3	4	2	4	1	2	2	4	3	3
Ward 3	23	1	1	-	1	1	3	-	4	2	-	4	1	4	1	-
Ward 4	92	3	4	2	3	2	10	12	11	10	9	7	4	6	6	3
Ward 5	35	1	2	1	1	-	3	-	1	5	6	1	3	3	3	5
Ward 6	27	-	2	-	1	1	3	2	1	2	3	3	1	2	4	2
Ward 7	85	10	5	2	1	2	1	2	4	2	7	9	5	25	5	5
Ward 8	52	2	1	-	-	1	1	2	6	3	6	3	6	4	9	8

tenant association (TA) representing over 50% of occupied units and democratically decide to pursue TOPA. In many cases tenants are unaware of their rights or options before receiving an offer of sale making this level of response noteworthy. Properties where tenants registered were, on average, significantly larger (averaging 54 units) while properties where tenants did not register were significantly smaller (averaging 27.7 units). By registering, the TA is entitled to up to 120 days to explore and negotiate a purchase by itself or with a partner.

The momentum of tenant organizing increased over the study period. In the initial period of 2006-2010 notices, TAs registered in only 37% of cases. This tenant response rate grew to 46% of all cases in 2011-2015, and to 50% of cases in 2016-2020. In the peak year of notices in 2018, there were 52 tenant associations that registered, which meant a response in 57% of all notices that year. In short, **TOPA has been getting more effective over time.**

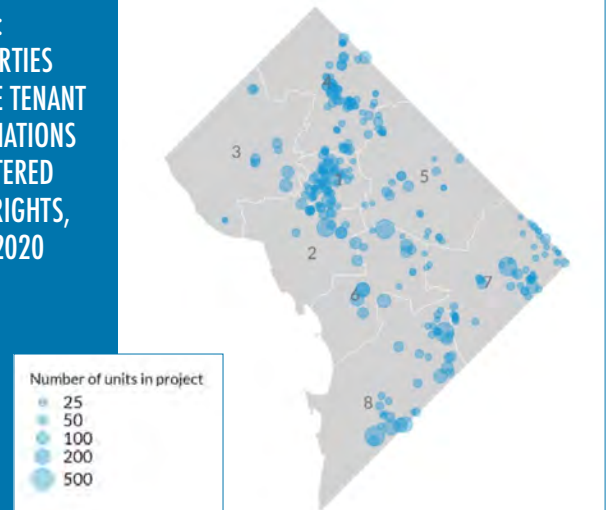
TABLE 2: PERCENTAGE OF PROPERTY NOTICES WHERE TENANT ASSOCIATIONS REGISTERED

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	45.4	46.3	42.6	35.5	30.2	31.6	45.7	40.5	49.3	46.3	48.6	42.9	43.5	57.1	50.7	54.0
Ward 1	54.8	0.0	50.0	83.3	55.6	60.0	53.3	66.7	80.0	60.0	44.4	10.0	50.0	50.0	75.0	50.0
Ward 2	43.5	33.3	60.0	16.7	25.0	66.7	50.0	57.1	66.7	80.0	33.3	50.0	66.7	36.4	25.0	42.9
Ward 3	65.7	100.0	50.0	-	50.0	25.0	100.0	-	80.0	66.7	-	100.0	100.0	66.7	50.0	0.0
Ward 4	66.7	100.0	80.0	28.6	50.0	28.6	71.4	66.7	64.7	71.4	69.2	77.8	100.0	85.7	66.7	60.0
Ward 5	39.3	33.3	50.0	50.0	33.3	0.0	50.0	0.0	14.3	41.7	60.0	33.3	33.3	42.9	50.0	55.6
Ward 6	38.0	0.0	100.0	0.0	50.0	12.5	30.0	22.2	50.0	28.6	75.0	75.0	20.0	66.7	57.1	66.7
Ward 7	40.9	71.4	33.3	28.6	12.5	20.0	16.7	25.0	23.5	22.2	38.9	36.0	38.5	65.8	41.7	62.5
Ward 8	29.5	22.2	10.0	-	0.0	12.5	10.0	12.5	42.9	20.0	35.3	27.3	35.3	36.4	60.0	57.1



The pattern by ward shows that tenants in every ward regularly organize an initial TOPA registration response, though the response rate is uneven across the city. The highest numbers of TOPA-registered tenant associations were in Ward 4 (92 associations), Ward 7 (85 associations), and Ward 1 (74 associations). In Ward 8, the somewhat low number of organized associations (52) was offset by the properties' large unit count such that **Ward 8 had the largest number of units in TOPA-registered buildings** among all Wards: 4,814 units.

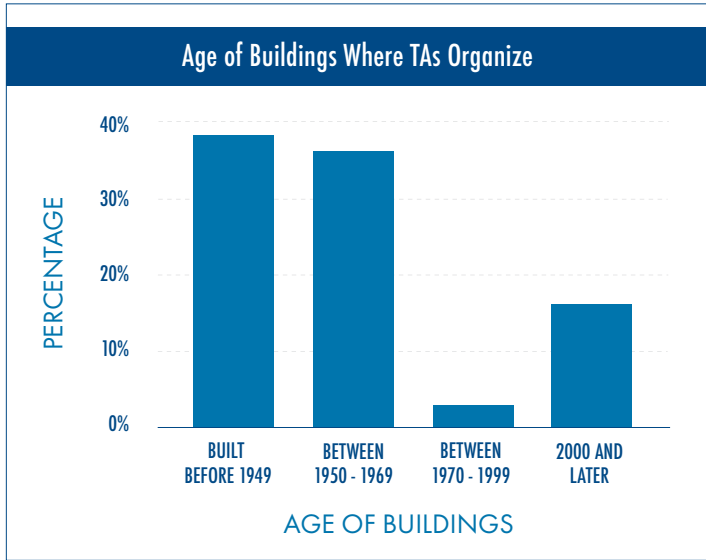
MAP 1: PROPERTIES WHERE TENANT ASSOCIATIONS REGISTERED TOPA RIGHTS, 2006-2020



Tenant organizations that have pre-formed and communities with pre-existing community cohesion were typically more likely to engage in the TOPA process. In some cases, tenant associations had experienced a previous TOPA process in which they exercised their rights, such as at 1111 Massachusetts Avenue NW and 301 G Street SW (see case studies). In some cases, when the building was for sale the second time, the association had formed, knew the process, and responded more quickly. In other cases, the tenants formed from scratch with engagement from one of the CBOs, which provide tenant education and organizing support.

Tenants organize to preserve affordable housing: In nearly all sales where the housing had a subsidy (LIHTC, Section 8) a tenant association registered (there were only 7 sales of subsidized properties where a tenant association did not register and in all cases the subsidy was maintained). Indeed, the District stands out because it has lost few subsidized buildings over the past 15 years¹¹.

Age of buildings where TAs organize: The large majority of apartment buildings where tenant associations registered their TOPA interest during the study period have structures more than 50 years old. Among all 23,266 apartment units corresponding to TA registrations of TOPA rights, over **73% of units registered were for buildings built before 1970**, with 19% for those built since 1970, and 7.7% of unknown age.



Since tenant responses to TOPA usually are prompted by an interest in building improvements and continued affordability, TA responses have focused on older properties. The relatively low rate of TA formation in Ward 6 (registering in only 38% of the notices) likely relates to the preponderance of newer buildings in that Ward due to large scale redevelopments in the Navy Yard, Southwest Waterfront and NoMa.

Myth vs. Reality: Unreasonable Demands

URBAN MYTH	VS	REALITY
<p>TOPA is used by middle- and upper-income tenants who organize when their newer, luxury (Class A) buildings go up for sale. The undue burden these sales create by making unreasonable demands is not related to improving their housing.</p>	<p>VS</p>	<p>Data show that only 21 total sales (16% of the units) with TA registrations between 2006 and 2020 were in newer properties built since 2000. That proportion was only slightly higher (17%) for more recent notices issued between 2016 and 2020, a period which saw an average of 245 newer units per year where a sale process involved a TA registering.</p>

SALES WHERE TOPA WAS NOT EXERCISED

While this study focuses on sales where tenants activated the TOPA process by organizing with their neighbors to register a tenant association and interest in purchasing, the most common response to an offer of sale (about 55% of the time) was to do nothing. The “no-action” response was most often the case in smaller buildings and in properties without affordable housing subsidies.

While D.C. does not track changes to a property following a sale:

- Properties where tenants did not choose to exercise their TOPA rights are very likely under rent stabilization (due to their size, age¹², and lack of an affordable housing subsidy—given that tenants nearly always register when their property is subsidized). Rent stabilization remains in effect through the sale of a building. Therefore, rents should not be raised beyond rent control limits solely due to a change in ownership, giving tenants less incentive to organize.
- Tenants cannot be displaced by the event of sale alone, though *not all tenants are aware of the right to stay*. Due to just cause eviction protections, a lease in D.C. cannot be terminated or changed due to the event of a sale.
- Buyouts can occur outside of TOPA. An owner is not prevented from offering tenants a buyout agreement outside of TOPA. Tenants in these properties could take money in exchange for vacating. These tenants would lack a tenant association which can provide leverage in negotiations and ensure vulnerable tenants are not taken advantage of.

¹¹ Kathryn Howell, *Affordable Housing Preservation in Washington, DC: A Framework for Local Funding, Collaborative Governance, and Community Organizing for Change*. (Routledge, 2021).
¹² Only 57 sales involved properties built after 1985, meaning they would be exempt from rent stabilization.

FINDING #3

TOPA NEGOTIATION ALLOWS TENANTS TO SHAPE DEVELOPMENT OUTCOMES TO ACHIEVE TENANT GOALS RELATED TO RENOVATION, AFFORDABILITY, AND HOMEOWNERSHIP.

3a. TOPA negotiation around a property sale is the main route for renovation without displacement.

TOPA law provides a framework for a tenant association to form, and it guarantees sufficient time to negotiate with a buyer. Outside of TOPA, D.C. lacks a clear process for renovations to the older, occupied housing stock.

A tenant association and their attorney are equipped to negotiate repair/renovation details and accommodations that are not mandatory under D.C. tenancy laws. In the case of renovation, which may require either temporary relocation or the inconvenience of in-place renovation, a tenant association often gets an agreement for any temporary relocation to be onsite, boosting the likelihood that all tenants will stay at the property. In contrast, non-TOPA redevelopment plans without tenant input may well scatter tenants throughout the area, effectively displacing

the original tenants. In the case of repairs, in contrast to a complete renovation, the tenant association and organizers generally conduct common area and unit inspections to document poor housing conditions and ensure that repairs are outlined in a development agreement in a way that is actionable and enforceable.

There were 235 properties where tenant associations negotiated through TOPA to secure renovations or repairs as a condition of an assignment. This includes major renovations (even including demolition and new construction replacing existing units) as well as modest repairs a new owner agrees to complete. In the latter case, a tenant association may negotiate to require that repairs get made to all units equally in cases where a landlord may have been ignoring repair needs in units with long-term tenants.

TABLE 7: RESIDENTIAL UNITS IN PROPERTIES WITH RENOVATIONS OR REPAIRS IN TENANT DEVELOPMENT AGREEMENT OR PURCHASE

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	14,993	481	440	279	495	723	1,096	1,228	2,269	995	1,945	1,515	1,943	1,099	377	108
Ward 1	2,792	-	21	266	157	486	193	371	179	163	114	30	486	227	66	33
Ward 2	1,156	173	170	-	-	-	160	63	25	113	10	171	162	67	42	-
Ward 3	447	-	-	-	-	74	95	-	251	-	-	7	-	20	-	-
Ward 4	2,661	69	142	-	174	59	340	332	188	242	215	276	252	297	75	-
Ward 5	797	-	-	13	116	-	104	-	-	106	143	93	59	53	110	-
Ward 6	897	-	10	-	-	-	204	416	-	-	-	267	-	-	-	-
Ward 7	1,955	94	97	-	48	68	-	28	91	36	927	167	88	280	-	31
Ward 8	4,288	145	-	-	-	36	-	18	1,535	335	536	504	896	155	84	44



Of all units where tenants negotiated an assignment or purchase deal, 78% of the units would receive renovation or repair. Using another metric, these 14,993 units represent the upgrading of 12% of all rental units in the District. The data in Table 7 show that repairs/renovation of 14,993 units across the District has occurred or is planned for developments still in progress. Again, these are properties that, absent the TOPA process, might not otherwise have received any investment in renovation or repairs for existing tenants.

The emphasis on rehabilitation as an outcome of TOPA negotiations is not surprising since, outside of TOPA, tenant associations most often form in response to quality of life problems in a property. It further corresponds with the focus on TOPA registrations on older buildings—at least 86% of TA TOPA registrations occurred in buildings built before the year 2000.

The focus on improving housing conditions was extremely high in tenant-negotiated rentals and homeownership in four wards in particular: nearly all TOPA outcomes in Wards 4, 7, and 8 and about 90% in Ward 1 included a renovation/repair requirement.

One special accommodation that tenants may bargain for is a renovation plan which adapts unit sizes to fit the actual tenant demographics. Families who need three bedrooms or more are not often served by existing unit mixes, but TOPA negotiation may create a platform to increase the number of larger units during the renovation. This is exemplified in two case study projects, Euclid Street and the Mt. Pleasant Preservation Project.

CASE STUDY 6

Ridgecrest Village

Renovation Achieved with Tenant Assignment

LOCATION

2000 Ridgecrest Court SE
Congress Heights – Ward 8

UNITS

140 in Phase I rehab, 132 in Phase II rehab

DEVELOPER

NHP Foundation

TOPA NOTICES

7/1/17; Acquisition: 2/28/19

Renovation: October 2022 - March 2024



GOALS ACHIEVED

100% of units retained as affordable housing with addition of new LIHTC and DHCD covenant. Aging 1950s buildings upgraded and made energy efficient, without any tenant displacement.

TENANT ASSOCIATION INVOLVEMENT

The TA worked with the Latino Economic Development Center organizers and the TA attorney to find a developer partner and ultimately assigned their TOPA rights to NHP Foundation. The TA negotiated to achieve continued affordability, and ensure their particular site concerns were addressed (failing systems and fixtures, especially plumbing, inadequate laundry facilities and better security) while maintaining the popular pool/rec center amenities. Tenants' temporary relocation during renovation will mostly be to other units onsite, boosting the probability that all current residents will remain on the property.

FINANCING SUMMARY

D.C. Housing Preservation Loan Fund provided \$1.34 million of the acquisition capital needed, as the property was held for 3 ½ years before take-out and construction financing closed in October 2022. Primary permanent sources for Phase I are \$16.1 million from the Housing Production Trust Fund, tax exempt bonds, and substantial LIHTC equity.

AFFORDABILITY

A majority of units will be affordable to households below 50% of area median (AMI). All current tenants in good standing on rent who wish to return are being relocated off site and will move back into the new units, with rents capped at current levels, and any future increases in correspondence with D.C. rent control.

3b. TOPA gives tenants the leverage to negotiate for continued and deeper affordability.

Affordability is a paramount tenant priority for TOPA rental negotiations or co-op purchase. TOPA projects utilize all the standard programs which provide affordability: rent control, LIHTC, Housing Production Trust Fund, project-based Section 8, and the Local Rent Supplement Program. To achieve tenant priorities for non-displacement, tenant associations may negotiate specific modifications in the use of these tools.

- Rent control:** TOPA agreements to maintain rent control often include details around repairs and may include an agreement that the housing provider will not use a voluntary agreement or provider petition (e.g. hardship petition) to raise rents above rent control limits for a period of time. Most TOPA cases retaining rent control kept rents low for 100% of the units, based on the project survey. In contrast, 83 TOPAs in this study were linked to voluntary agreements which in most cases raised rent limits for future tenants while preserving existing tenants' rents and mandating specific repairs¹⁷. Though a voluntary agreement does not take the unit or building out of rent control it has often meant that specific units lost affordability. There were **7,712 TOPA units** where rent control extension was the primary affordable protection.
- LIHTC and HPTF:** As mentioned earlier, there were **7,774 units** in 101 TOPA projects using LIHTC and **3,620 units** in 60 TOPA projects receiving HPTF (often in combination). Many projects also used DC Housing Finance Agency loans.
- LIHTC "plus":** LIHTC rent limits are often higher than existing rents at a TOPA property. Thus a standard provision in TOPA development agreements is for existing tenants' rents to continue at current levels with these tenants' rent increases following rent

control or a stricter limit, a feature we've dubbed "LIHTC-plus." This can make a crucial difference in saving tenants hundreds of dollars per month and thereby preventing displacement.

- Project Based Section 8:** Under the Housing Choice Voucher Program (Section 8), and its locally corollary the Local Rent Supplement Program (LRSP), rents are based on 30% of the family's income. While a small number of D.C. landlords have opted out of the project-based Section 8 program in recent years, tenants and affordable housing advocates view preserving these subsidies as vitally important; once lost, they cannot be easily replaced. When tenants bargain in a TOPA sale of a Section 8 property, the association will ensure that Section 8 contracts are extended to keep these federal dollars in place. Among TOPA negotiated rentals, 21 projects with **3,028 subsidized units** (3,147 total units) had project-based Section 8¹⁸. Some examples in our study include: Glenn Arms Apartments in Adams Morgan, Paul Lawrence Dunbar Apartments on U Street, Wah Luk House in Chinatown, Benning Heights in Ward 7, and Parkchester in Ward 8. (See Wah Luck House case study.) LRSP units were also added in a number of tenant purchase projects (the exact LRSP unit count is not available). (See the Mt Pleasant Preservation Project case study.)

One mission-driven developer commented on affordability goals:

"We don't really have a standardized approach when we're negotiating with tenant associations and their counsel. It's largely driven by the expectations of the tenant association and how well their attorney advocates for them. So, we're flexible, right? ...In terms of retaining households and being anti-displacement, we have responded to their request for rent increase caps."

VOLUNTARY AGREEMENTS

Voluntary Agreements (VAs) historically have affected affordability in some TOPA deals. VAs are a legal agreement between an owner and at least 70% of existing residents to modify rents outside of what is allowed under rent control. In our study data, VAs were approved within 3 years of a sale (before or after) in about 8% of sales and affected just over 3,000 units of housing. The average rent increase approved in these VAs was 107%, over \$1,360 a month. There has been a moratorium on VAs which is set to expire on October 1, 2023. For more details about VAs in our study, see Appendix E.

¹⁷ Voluntary agreements were approved within 3 years of a sale (before or after) in under 9% of sales (83 properties, with over 3,000 housing units).

¹⁸ In addition to projects where tenant associations registered, there are another three properties with 692 units where project based Section 8 was extended without negotiation involving the tenant association.

CASE STUDY 7

Tivoli Gardens

Deeper Affordability Beyond LIHTC Achieved

LOCATION

4811 N. Capitol St. NW
Ft. Totten – Ward 5

UNITS

49, 100% affordable with 40 year covenant

DEVELOPERS

Manna, Inc., Equity Plus

TOPA NOTICES

5/5/16; Acquisition: 7/27/17
Renovation: Completed in 2021



GOALS ACHIEVED

Preservation of a smaller affordable rental building with no displacement; as developer, Manna Inc. followed its policy of full renovation, 100% unit affordability, and no cash buyouts.

TENANT ASSOCIATION INVOLVEMENT

The Tivoli Gardens Unidos tenant association worked with their attorney and Housing Counseling Services in 2016 to solicit developer proposals. The TA selected Manna, Inc., assigned their TOPA rights, and negotiated a specific agreement for affordability and renovation.

FINANCING SUMMARY

The project was pooled with a second affordable project in Ward 8 to achieve a larger scale and obtain tax-exempt bond financing and LIHTC, in what the D.C. Housing Finance Agency called a “creative structure.” In addition, DHCD provided a \$2.57 million Housing Production Trust Fund loan.

AFFORDABILITY

Affordability is guaranteed for 100% of the units for 40 years for households earning 30, 40, and 60% AMI. Existing residents' rents will not increase by more than D.C. rent control rates.

CASE STUDY 8

19th Place S.E.

Assignment of Tenants Rights to Preserve Rent Control

LOCATION

2020 19th Pl SE, Anacostia, Ward 8

UNITS

29

DEVELOPER

Linden Property Group

TOPA NOTICES

12/11/2018; Acquisition: 9/30/2019

GOALS ACHIEVED

The tenant association, which includes many tenants with Housing Choice Vouchers and DHS subsidies, negotiated to stay under rent control as well as getting the purchaser's agreement not to file future rent increase petitions. In addition to rent protections and immediate repairs, the owners also agreed to longer-term improvements. The owners will heavy-up the electrical system and improve the air conditioning, address all leaks in the building, and waterproof the foundation.

TENANT ASSOCIATION INVOLVEMENT

The tenant association at the building was organized with the support of Housing Counseling Services. When the building went up for sale in 2018, the third party Linden Property Group, held a meeting at the building. The tenants were interested in the plan that Linden offered but they also wanted to ensure they had enforceable guarantees for their goals. After hiring an attorney to help them draft an assignment agreement, the tenants held further meetings with Linden to discuss their priorities and later voted to assign their rights. Tenants were primarily interested in continued affordability, getting overdue maintenance in individual units, improved security, and fixing persistent leaks throughout the building. (At the time of sale, 1-bedrooms rented for up to \$1,200, 2-bedrooms for up to \$1,900, and 3-bedrooms for up to \$2,300.) The new owners have agreed to meet with the tenants on a monthly basis, so the tenants will continue to be involved in the improvement process after the sale.

3c. TOPA allows tenants to bargain around quality of life issues.

When tenant associations discuss terms of property transfer with a new purchaser, issues such as property management, security, or site amenities may be a tenant priority. A

specific need for an intercom system, better laundry room, responsive property management, or onsite community space can be captured in the development agreement.

PITFALLS THAT PREVENT CERTAIN TENANT ASSOCIATIONS FROM ACHIEVING SUCCESSFUL OUTCOMES THROUGH TOPA

As documented in this report, TOPA is a powerful tool for helping preserve affordability in rental housing and achieve other positive outcomes for tenants. Our interviews with

CBOs and others revealed situations that can prevent tenants from properly exercising their TOPA rights.

SCARCE TIME AND ORGANIZING RESOURCES

Makes it difficult to build community, understand the needs of the residents, and educate tenants about their options. One technical assistance provider discussed the first 45 days in which they help organize buildings with a TOPA notice: *“All sorts of things are so rushed that if we had more time and spaciousness, we could be more values-based on what people want their bylaws to be and more clear about what’s important to [tenants] in a leader [and] how to make sure there’s representation [in tenant association].”*

POOR BUILDING CONDITIONS DISCOURAGE TENANTS FROM PURSUING TOPA

Nearly every interviewee discussed poor building conditions as a challenge. Apart from the impacts of poor housing on mental and physical health, poor conditions also impact the viability of TOPA. Residents and organizers described conditions ranging from rat and insect infestations and a lack of security to structural deficiencies due to flooding. Tenants are often less likely to fight to stay in a building with poor quality. Tenants with options to move may find better housing elsewhere, creating high vacancies and fewer tenants with the time and resources to fight to stay. One technical assistance provider argued, *“We sometimes are talking to tenants—they are like... I have roaches all over the place. I have mice everywhere. Why are you telling me that I should try to fight to stay in this really crappy place when some guy is offering me money to move somewhere? And so this does affect how successful TOPA is.”*

SOME TENANT ASSOCIATIONS ARE TROUBLED BY A LACK OF COMPETENCE OR DISHONESTY

Tenants, developers, attorneys, and TA providers all discussed a range of poor democratic decision making, including co-opted leadership, and violations of voting rules. As one mission-driven TOPA developer explained, *“[If] there’s a bad actor in the space, the tenant association doesn’t speak for the residents. Sometimes they don’t engage the residents. In this particular case the Tenant Association did no engagement. They didn’t bring the offer to the residents. They didn’t. They just sat there [...] to, basically run out the clock. And then we did an all-out campaign to engage everyone.”*

Residents reported associations that would not listen to them, would not share information or would hold meetings without inviting all members of the association. In contrast, organizations with existing cohesion were often able to collectively recognize and call out undemocratic decisions and prevent incursion by outside brokers.

TENANT GROUPS MAY HAVE VERY DIFFERENT GOALS AMONG DIFFERENT TENANTS

One tenant leader related her story: *“We have again, 12 buildings. It’s 100-plus tenants. It’s a lot of personalities... it’s a huge immigrant population with a lot of elderly people there, a lot of people want to go condo. The landlord has said the new buyer is open to condo, but not cooperative. I can tell a lot of people are struggling to pay what they already are paying. And I didn’t know this, but apparently seniors, they pay a lot less. So they actually really want to stay as renters and not go cooperative. I learned a lot from everybody. And a lot of people want buyouts too. Our buildings are interesting because they are under rent control, and they’re not in the best condition.”*

CASE STUDY 9

Capital Park Towers

Negotiating Quality of Life Issues

LOCATION

301 G St SW – Southwest Waterfront District – Ward 6

UNITS

289

DEVELOPER

Urban Investment Partners (UIP)

TOPA NOTICES

09/27/2018; Acquisition: 06/03/2019



🎯 GOALS ACHIEVED

Tenant association negotiation and assignment of TOPA rights led to a development agreement with preservation of rent control, property upgrades, property management agreement, and access to site amenities.

🔑 TENANT ASSOCIATION INVOLVEMENT

The tenant association had previously organized and negotiated a TOPA agreement around a prior sale in 2013, and the 2019 agreement built off that deal. Creation of the association also served as a springboard for the TA to get involved in neighborhood issues, including helping initiate a successful historic designation for their building and providing financing support for the Southwest Neighborhood Association.

💰 FINANCING SUMMARY

The property maintains rent controlled rents without any public financing subsidy. This property is not affordable to very low income households but limiting rent increases through D.C.'s rent control program allows low-to-middle-income households to afford to stay, with 1-bedroom rents averaging under \$1,800.

3d. TOPA enables certain tenant associations to purchase their buildings as co-ops or condominiums.

The predominant ownership form chosen by tenant groups under TOPA, during the study period, has been the limited equity cooperative. It offers accessibility across income groups, as even low income families without substantial savings accounts can buy in at an affordable purchase price. Ever since the inception of TOPA in 1980, tenant co-ops have been a primary method for tenants to remain in their current neighborhood even in the midst of gentrification.

To form and operate an LEC is a huge commitment on the part of the tenants. Tenant organizers from CBOs educate tenants on the option and process and look for tenant associations that have a high degree of commitment and cohesion. Immigrant families are particularly likely to participate in co-op purchase as a means of achieving long-term stability as well as remaining in a community with services and retail stores that cater to their needs. (See Appendix D for more detail and historical perspective on coop conversion.)¹⁹

The frequency of limited equity co-op purchase has slowed in recent years due to extraordinarily high costs of acquisition, but in our study period there were 29 new co-ops with **771 co-op units** created through exercise of TOPA rights. These are structured to remain affordable permanently, generally not requiring recapitalization or additional subsidy in future years.

Condominium conversions may also be orchestrated by existing tenants who exercise their TOPA rights. This requires the existing tenants to be able to qualify for a mortgage and afford substantial buy-in prices, even when existing residents benefit from lower “insider” pricing, and so, did not occur often in our 2006-2020 study period. The study documented 11 projects with 284 units that were tenant-sponsored condo conversions. A greater number of condominium conversions have occurred outside of the TOPA process, whereby a developer takes ownership of a vacant rental building or one where all tenants have taken buyouts. Among buildings receiving a TOPA notice, there were developer-sponsored condo conversions for 43 properties with 1,846 units. Since these condo units are entirely market rate²⁰, in buildings that had previously been affordable (likely, the majority of the properties) they represent a loss of affordable rental housing.



CNHED's 2022 Housing for All Rally

¹⁹ Also see "Creating and Sustaining Limited Equity Cooperatives," published by CNHED, Feb. 2020

²⁰ With the exception of any units where a statutorily protected senior has elected to stay under rent control. In these cases, the tenant association may negotiate to have that unit fully renovated and the senior(s) will stay indefinitely.

CASE STUDY 10

Aspen Street Cooperative

Homeownership as Limited Equity Co-Op

LOCATION

1400 Aspen St. NW – Brightwood – Ward 4

UNITS

30

DEVELOPERS

Aspen Street Co-op, Martha Davis consultant

TOPA NOTICES

12/22/15; Acquisition: 2/19/20

Rehab: 2023 ongoing



GOALS ACHIEVED

A diverse group of working-class tenants, 85% of whom are immigrants from Ethiopia and Central America, became homeowners using the limited equity co-op model. Recognizing that this development area next door to Walter Reed will be seeing rent increases and redevelopment pressure, tenants fought through a legal battle to utilize their TOPA rights. Renovation of units, addition of solar panels, and creation of a community room is underway in 2023.

TENANT ASSOCIATION INVOLVEMENT

The tenant association worked with the Latino Economic Development Center and a team of attorneys to decide on the co-op model of purchase and then went through a three-year legal battle to attain it. Tenants were active in fighting a lawsuit initiated by the seller and third-party purchaser over internal procedures, which was settled in the tenants' favor in 2019. Residents then helped create the financial and renovation plan for the future co-op. An elected seven-person board makes ongoing decisions for the property.

FINANCING SUMMARY

Use of the Housing Preservation Loan Fund was critical in enabling the 2020 purchase of the building. It was repaid in May 2023 when the co-op settled on new financing, including a \$4.9 million loan from DHCD's HPTF.

AFFORDABILITY

The co-op's monthly charges will remain affordable in perpetuity under the terms of the DHCD loan, and will serve households at 50% and 60% of median income. All existing residents can afford to stay in place.

3e. TOPA has helped maintain diversity in gentrifying neighborhoods and supports racial equity overall.

Tenants have used TOPA rights in some cases to remain in expensive areas, including downtown, and near Metrorail transit, forming cooperatives or partnering with developers who can marshal the subsidies required. Because condo conversion is off the table when tenants organize to negotiate a rental assignment, this can help moderate the sale price of such a building and make it feasible for tenants to stay. Examples of such TOPA assignments included in our study data include 1111 Massachusetts Avenue NW, Portner Flats on U Street, Channel Square near the SW Waterfront, Dahlgren Apartments at the Rhode Island Avenue Metro, 3218 Wisconsin Avenue Co-Op in Ward 3, 1417 N. Street Cooperative in Ward 2, and Congress Heights Metro

redevelopment. With today's property acquisition prices going even higher, however, it will be extremely challenging for future TOPA developments to maintain affordability in such prime locations without changes to the available subsidies.

Racial equity is promoted when renters in the District manage to avoid displacement in the face of gentrification. The District was named in a 2019 National Community Reinvestment Coalition study as having the highest percentage of census tracts that gentrified from 2000-2013. The city has seen dramatic changes in racial demographics as it lost 58,000 Black residents between 2000-2020 according to the Census Bureau, almost one in five Black residents.

TOPA serves as a counterbalance to that trend, retaining the 19,170 units where tenants negotiated a rental or ownership TOPA deal (housing 38,340 residents, assuming an average of two people per unit.) Citywide, the renter population is weighted more heavily to people of color. Among all District households, 59% are renters but for Black households it is 64%. For those reporting two or more races it is 67%, and among Asians 61% are renters. This means a program benefiting renters tends to disproportionately assist persons of color.



CNHED's 2022 Housing for All Rally

A program benefiting renters tends to disproportionately assist persons of color.

Ward 8 in particular is a locus of TOPA as a racial equity tool. This ward's 2020 population was 93% Black or two or more races, the highest concentration in the city. As shown in this study, Ward 8 has seen the highest volume of TOPA rental assignments among all wards of the city.

There is no government data on the racial and ethnic makeup of the TOPA development projects but one active TOPA developer, Mi Casa Inc., has collected resident data for its rentals and co-ops. It demonstrates TOPA's disproportionate benefit for people of color. The co-op survey sampled the majority of residents in each of nine co-ops representing 283 units, and showed 64% of households identified as African/African-American and 28% Latinx. The TOPA rental survey is based on five buildings with 81 units (where over 50% of households responded), and showed 43% identified as African/African-American and 19% Latinx. (Latinx ethnicity overlaps with racial categories.)



CASE STUDY 11

Channel Square

Diversity in a Gentrifying Neighborhood

LOCATION

325 P Street SW – Southwest Waterfront – Ward 6

UNITS

221 units total, 66% affordable with 40 year covenant

DEVELOPERS

Somerset Development, National Housing Trust

TOPA NOTICES

8/30/12; Acquisition: 10/31/13;

Renovation: Completed in 2016

GOALS ACHIEVED

Preservation within gentrifying neighborhood near the Wharf; transit-oriented two blocks from Metro; mixed income development with no displacement; Renovation with solar and other energy efficiency; ongoing resident services.

TENANT ASSOCIATION INVOLVEMENT

The tenant association worked with their attorney and Housing Counseling Services in 2012 to solicit proposals from Somerset and NHT as an alternative to a third party that had signed a purchase contract. The TA selected the two companies to work together as a development partnership, assigned their TOPA rights, and negotiated specific agreements governing management, affordability, and funding for resident services using an annual payment from the owner partnership.

FINANCING SUMMARY

A majority of financing came from a bank community investment loan and LIHTC equity, but DHCD supported the project with a \$7.4 million Housing Production Trust Fund loan.

AFFORDABILITY

Two-thirds of units are guaranteed to remain affordable for 40 years at 50-80% AMI, and the remaining third secured rent stabilization for existing tenants. There is a two-tiered rent structure to charge new tenants higher rents in the non-covenanted units. Some families are still living at Channel Square who were the first to occupy the building when it was originally built in 1968, utilizing HUD Section 236 financing at that time.

Channel Square Apartments won the 2018 Excellence in Affordable Housing award from ULI Washington

Click here to see the video: <https://vimeo.com/265048099>

CASE STUDY 12

3218 Wisconsin Avenue Cooperative

Promoting Neighborhood Diversity

LOCATION

3218 Wisconsin Ave NW – Cathedral Heights – Ward 3

UNITS

20

DEVELOPER

3218 Wisconsin Ave Co-op,
Mi Casa Inc. development consultant

TOPA NOTICES

5/18/18; Acquisition: 7/3/19; renovation: TBD



GOALS ACHIEVED

Residents banded together in response to the proposed sale of their building and overcame the opposition of the seller, achieving co-op homeownership in this attractive neighborhood near the National Cathedral. Many feared rising rents in the future and wanted to preserve affordability in the area knowing that the affordable housing options there are very limited. This multi-ethnic group includes African American, Latinx, African, Asian and Eastern European residents who are now owners within a ward whose population is 71% White.

TENANT ASSOCIATION INVOLVEMENT

Most of the tenants were long-time residents who appreciated the desirable location of this building. Supported by organizers at the Latino Economic Development Center and Mi Casa Inc. they navigated the TOPA process but had to overcome the seller's repeated interference in telling tenants they would never succeed as well as trying to block organizers' building access. Some residents supported a condominium option but ultimately they decided to create a co-op as it was the most accessible for lower income families and seniors in the building. The co-op board has been active in planning a future renovation and filling vacancies with new residents working in conjunction with their consultants.

FINANCING SUMMARY

Without the substantial cash needed for a conventional purchase loan, the Housing Preservation Fund was utilized for acquisition financing of \$3.9 million, whose terms also help reduce interest costs in the initial years. The co-op now is seeking low interest financing through DHCD's HPTF, which is especially pivotal for affordability in a cooperative because it cannot utilize LIHTC equity sources.

CASE STUDY 13

Wah Luck House

Building Racial Equity

LOCATION

800 6th St NW - Chinatown – Ward 2

UNITS

153

DEVELOPER

Wah Luck House Preservation LLC (Foundation Housing)

TOPA NOTICES

2/6/2017; Acquisition: 12/22/2017; renovation: 2018



🎯 GOALS ACHIEVED

Tenant association assignment of TOPA rights preserved affordable housing for over 150 predominantly senior and Chinese or Chinese-American families in D.C.'s Chinatown. Located in the Gallery Place area that has gentrified tremendously since the property was first built, Wah Luck House developer partners noted the threat of a market-rate development when the property came up for sale in 2017. The chosen developers maintained the project-based Section 8 contract critical to affordability and brought in additional funds for renovations.

🔑 TENANT ASSOCIATION INVOLVEMENT

When this building went up for sale the elderly, primarily Chinese, residents feared they would be displaced and D.C. would lose much of its remaining Chinese community. Wah Luck House was constructed in 1982 for the Chinese community that had already been displaced by the construction of the then-new D.C. convention center. For many of the elderly Chinese residents it is the only place they have lived in the United States. The District's more elderly Chinese residents currently number in the hundreds and it is estimated that the majority of D.C.'s long-time Chinese community lives at Wah Luck.

Residents' goals were to be able to remain in their homes and to see improved property management and conditions. The renovation updated kitchens and bathrooms and added a health clinic on the ground floor. Residents were able to continue living at the property throughout renovation.

💰 FINANCING SUMMARY

The acquisition and rehabilitation of Wah Luck was funded by multiple partners including LIHTC equity for the first time on this project and bond financing from DCHFA. (DHCD Trust Fund financing was not utilized.) As part of the development agreement, the property's HUD project-based Section 8 contract was extended for an additional 20 years.

FINDING #4

TENANT BUYOUTS ARE SOMETIMES AN OUTCOME, BUT BUYOUTS OF AN ENTIRE BUILDING ARE RARE.

The term “buyout” generally refers to payments to tenants to vacate their unit—giving up not just *TOPA rights* but *occupancy rights*. Buyouts are most often used when tenants’ rents are below market, making a vacant unit more valuable. (Under District rent control, a higher rent increase is permitted when a unit turns over, and a fully vacant building is taken out of rent control.) A part of that increased value potential is paid to the vacating resident. Residents offered buyouts can make a choice for their family to move and, in some cases, may receive a life-changing amount of money. At the same time, affordable housing may be lost permanently.

While buyouts are perceived as a common outcome they are actually quite rare. Properties being fully vacated by buyouts and losing affordability are a small fraction of TOPA cases. Since buyout data is not tracked publicly, this study’s buyout information comes from situations where a CBO, tenant attorney, or developer was aware of that outcome. **In over nearly 18,000 units (295 sales) with known buyout information, only 403 units (22 properties) were in 100% buyouts status** (i.e., all tenants received payments) and lost affordability. In another 66 of these sales, some tenants took an option to receive money to vacate (“partial/option” buyout). See Table 8.



TABLE 8: RESIDENTIAL UNITS IN PROPERTIES WITH KNOWN BUYOUT STATUS BASED ON DEVELOPMENT AGREEMENTS/CBOS

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	17,827	839	477	508	605	1,306	1,240	1,301	2,601	1,179	2,058	1,336	2,044	1,520	510	303
<i>With buyouts</i>																
100%	403	-	15	-	-	-	42	37	21	87	38	16	15	-	98	34
Partial/Option	3,349	46	-	161	331	112	302	149	518	484	70	49	123	599	193	212
None	14,075	793	462	347	274	1,194	896	1,115	2,062	608	1,950	1,271	1,906	921	219	57

Note: In a “100% buyout” all tenants took payments and vacated the property. “Partial/Option” buyout means that existing residents had a choice of whether to remain under the TOPA development plan or vacate and receive a buyout.

Many residents think that a building sale means they will have to move because they were displaced previously related to a sale in D.C. or elsewhere. So, the prospect of receiving money can seem like a win. Even when residents know their rights, buyouts may be appealing to residents who want to move due to poor housing conditions, particularly if they do not think their housing conditions will improve. While tens of thousands of dollars can be a powerful incentive to move, in reality it may not make economic sense once a resident projects out future years' cost of housing. CBOs can play an important role in assisting tenants to evaluate a buyout and have calculator tools designed specifically for the purpose.

Some developers see buyouts as a threat to TOPA's anti-displacement effectiveness. One commented:

"Giving residents more of a voice in the process, and I think [TOPA] has been very successful on that measure. I think it's been very accessible organizing them, getting residents to think about, you know, leverage and negotiation. Off the charts successful. But the problem with the TOPA legislation in D.C. is the buyout scenario."

Across the board, interviewees expressed frustration with buyouts. Profit-driven developers argued for the abolition of TOPA buyouts due to their use by market-rate tenants who will not be displaced and have other housing options. However, mission-driven developers and technical assistance providers typically argued for consumer protection related to buyouts to prevent tenants from signing away their rights without full information. Residents clearly have mixed perspectives. Those who attended focus groups (and were trying to preserve their buildings) expressed frustration with their neighbors, arguing that the buyout money would not last long, particularly because many had been paying less than \$1,200 per month rent. CBOs talked about residents taking buyouts only to return because they could not find housing they could qualify for or afford.

It's worth noting that buyouts are legal outside of the TOPA process and that in these cases tenants often lack technical assistance and the leverage of negotiating as an organized tenant group. If buyouts were not allowed under TOPA law, they would likely continue outside of TOPA, including, as is currently sometimes the case, with properties where tenants do not participate in TOPA. Further, tenants and CBOs stress that buyouts are not tenant driven but developer- or broker-initiated.

While buyouts are perceived as a common outcome they are actually quite rare.

In recent years, it has become common practice for brokers or developers to do outreach to a property prior to an offer of sale being shared with tenants, to announce that tenants can get money for moving. This offer then sets the tone for TOPA discussions. Both data and interviews find a recent increase in the use of 100% buyouts starting in 2019 (with the 2020 figure somewhat skewed by COVID policy changes), as acquisition prices increased hampering the chances for renovations and affordability preservation through TOPA. In many of these cases, developers offered high purchase prices and buyouts predicated on replacing existing tenants with Section 8 voucher-holders (given the voucher payment exceeds market rents).

Myth vs. Reality: Building-Wide Buyouts Are Rare

URBAN MYTH

Tenant buyouts are a primary outcome of TOPA. When there's a sale, tenants take cash to exit in large numbers.

VS

REALITY

Based on CNHED's substantial survey of 17,827 units where buyout information was captured, a building-wide buyout only occurs for 2% of TOPA units. A buyout option is significantly more rare than preserving affordable housing.

CASE STUDY 14

Mt. Pleasant Preservation Project Voluntary Buyouts in an Affordable Project

LOCATION

- Ward 1
- Richman Towers, 3055 16th St NW
 - Sarbin Towers, 3132 16th St NW
 - Park Marconi, 3150 16th St NW

UNITS

165 Units Total

DEVELOPER

Jubilee Housing

TOPA NOTICES

3/23/21; Acquisition: 10/7/22
Renovation planned for 2024



GOALS ACHIEVED

Preservation of three properties, sold as part of a portfolio, in a prime location in Mt. Pleasant/ Columbia Heights. These buildings are blocks from the Columbia Heights Metro and in an area which has seen extreme increases in rents. The properties will be preserved and renovated through the addition of LIHTC and Local Rent Supplement Program project-based vouchers to ensure affordability/anti-displacement for residents who are rent burdened. Some apartments will be combined to convert 1-bedroom apartments into 2- and 3-bedroom apartments to accommodate current families.

TENANT ASSOCIATION INVOLVEMENT

Tenant associations at each of the properties organized in 2021 with the support of the Latino Economic Development Center. The tenants had previously organized during a 2013 sale. While there were limited public funds available at that time, the tenant associations were able to negotiate to preserve rent control, rule out voluntary agreements or landlord petitions, and improve building conditions.

When buildings went up for sale in 2021, the tenants were approached by the third-party purchaser who offered residents \$30,000 to leave. While many residents with long-term ties to the property and community wanted to stay, others were interested in moving due to poor housing conditions and overcrowding. Residents' goals included improved housing conditions, maintaining affordability, and ongoing maintenance but many residents were also enticed by the buyout amount.

The tenant association received a proposal from Jubilee Housing and after negotiations (and the availability of The Amazon Housing Equity Fund), Jubilee was able to meet the tenants' goals of affordability, improved conditions and offer the same buyout as an option for tenants who wanted to leave. Jubilee will also apply for LRSP for residents who were rent burdened and will create larger units to address overcrowding. Jubilee Family Services will also add onsite services to the properties.

FINANCING SUMMARY

The Amazon Housing Equity Fund is making a signature \$15 million grant to this project, providing a sizable financial boost for project feasibility. Jubilee also invested funds from its social investing fund Justice Housing Partners 2.0, used a conventional bank loan, and received a Housing Preservation Fund loan through LISC D.C. Subsidy from the HPTF is now being sought for the permanent financing phase.

FINDING #5

TOPA RELIES ON A SUPPORT INFRASTRUCTURE OF TENANT ORGANIZERS, TECHNICAL ASSISTANCE PROVIDERS, ATTORNEYS, DEVELOPERS, AND FLEXIBLE FINANCING TOOLS.

While TOPA is a right, it, like voting, is often not meaningful without a supportive network of structures to be successful. Housing development requires a complex set of legal, financial, personal and communal processes that require broad expertise. Thus, strong technical assistance becomes critical to the success of TOPA. One mission-driven developer argued:

"The two pieces that make TOPA functional is you gotta have: Independent technical assistance on the front end [...] to help those tenants as an association understand what's possible and to help them make good decisions as an association so it's not just one person who wants the money, and that's hard because it's you know this is a multi-unit building. People don't necessarily know each other, there's language issues, there's trust issues And yet they've got to make a decision—What do I do here? And then the back end of that is there's got to be some cash available to fix it up. [W]e didn't buy the[se TOPA properties] to keep them as crappy as they are now. We bought them so we can renovate them, put them back online, add some twos and threes (bedroom apartments). And run a good building. ...You got technical assistance on the front end and you got the trust fund and LIHTC on the back end to make it actually make these things work."

Tenant organizing, technical assistance and attorneys are key. While funding is critical, the human power of organizers, technical assistance providers, and attorneys was consistently discussed by tenants and developers alike as the linchpin to the success of TOPA. In 2004, the District started to fund tenant organizers (also referred to as technical assistance providers) through Community Development Block Grant funds. Technical assistance providers were discussed by all mission-driven developers in interviews as critical to the success of TOPA. Tenants explained how an organizer helped them register their tenant association, negotiate the assignments of rights, understand their rights, assess the feasibility of options, find attorneys and understand the cost-benefits of buyouts. (During the study period, the three DHCD contracted CBOs

had a combined 7-10 staff in the departments that carry out city-wide TOPA-related work, plus other tenant outreach, education, and organizing, making this a small but essential component.)

For our 2006-2020 TOPA notice period, CBOs provided substantive support to 421 tenant groups, which is **45% of all buildings** with notices and sale. This corresponds to 20,534 units or **55% of all units** in the study group, as the typical building receiving CBO assistance had a somewhat larger than average unit count. Consistent with the tenant registration trend noted in Finding #1, the extent of CBO involvement increased dramatically post-2010 (with 2020 results being depressed by COVID restrictions) as shown in Table 9 on the next page.



CNHED's 2015 Housing for All Rally

TABLE 9: RESIDENTIAL UNITS IN PROPERTIES WITH CBO INVOLVEMENT

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	20,534	586	711	364	479	1,185	1,394	1,380	2,816	2,056	2,921	1,450	1,819	1,772	865	736
Ward 1	2,895	-	21	207	63	466	274	515	98	174	245	25	469	239	66	33
Ward 2	1,846	46	81	-	-	565	203	152	267	14	10	186	162	74	47	39
Ward 3	526	-	-	-	-	-	95	-	251	103	-	18	-	59	-	-
Ward 4	3,363	89	303	74	244	69	380	423	203	294	447	284	54	314	185	-
Ward 5	1,618	28	66	13	-	-	194	80	109	147	496	93	77	80	122	113
Ward 6	2,441	-	19	-	-	-	231	133	256	909	21	143	72	294	28	335
Ward 7	2,888	291	158	70	137	31	17	51	91	61	1,070	257	64	446	74	70
Ward 8	4,957	132	63	-	35	54	-	26	1,541	354	632	444	921	266	343	146

CBO education and outreach are particularly potent in achieving an outcome with affordability. An overwhelming proportion of units where affordability was maintained or added received CBO support. Table 10 shows there were 14,991 units in affordable CBO projects which is 92% of all affordable units where tenants utilized TOPA for affordability.

TABLE 10: RESIDENTIAL UNITS IN PROJECTS WITH CBO INVOLVEMENT AND AFFORDABILITY ADDED OR PRESERVED

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	14,991	409	454	50	332	1,148	1,104	1,109	2,431	921	1,975	1,139	1,664	1,474	546	235
Ward 1	2,139	-	21	18	40	457	170	457	31	96	86	5	469	227	29	33
Ward 2	1,510	46	81	-	-	565	160	152	25	-	10	171	152	67	42	39
Ward 3	515	-	-	-	-	-	95	-	251	103	-	7	-	59	-	-
Ward 4	2,641	69	245	19	244	59	358	354	154	232	196	272	54	297	88	-
Ward 5	874	-	-	13	-	-	104	-	89	106	159	93	59	53	110	88
Ward 6	899	-	10	-	-	-	217	128	256	-	-	-	-	288	-	-
Ward 7	1,932	162	97	-	48	31	-	-	91	49	920	157	40	280	26	31
Ward 8	4,481	132	-	-	-	36	-	18	1,534	335	604	434	890	203	251	44

One Latina tenant gave an account of the type of support her association received:

"We had an opportunity, we were already an association during that period. There was a young lady, her name is [TA Provider] and she was part of [CBO]. She helped us a great deal with the rights as tenants. So when they told us that they were going to sell the building, we were way ahead, thanks to all the advice that [they] provided us... about the TOPA process and then we exercised the TOPA process. It was not easy because I think that in my community as Hispanics, we are in fear. They explained that it has nothing to do with immigration, and even so, people left the building because they were in fear. I remember that when we were going through the process, there was another young lady from [CBO] as well and she was very, very patient. She would explain, she would talk to us to try to be part of it and to take advantage of the opportunities. For us it was a great opportunity ... Our housing was the most important thing, and I think the process was a success because we continue living in the building."

Tenant attorneys with specific TOPA expertise are another critical part of the negotiation and development of agreements in the assignment of rights, purchase of the building, or buyouts. Historically, the District has had a broad group of attorneys from university law clinics, particularly Georgetown University and the University of the District of Columbia, legal service providers, and a handful of small, private firms. It is also common practice for a legal service provider and a pro bono attorney from a larger law firm to team up on TOPAs related to preservation. The pro bono attorney can provide staff time while the legal service providers have TOPA experience.

However, multiple research participants argued that there were not enough attorneys as law clinics have closed. One resident whose association ultimately was not able to purchase the building said,

"The big frustration I've always had with TOPA is a few things. One is you need people that are capable of investing the time to understand the process. And if you don't have that, then somebody just buys the building and that's it. It requires a really active set of people to move this process from start to finish, even in a situation that's less complicated, I would imagine, than ours ended up being, in terms of the financing part. The other thing is, my understanding, is there are three lawyers that do TOPA. We worked with [TOPA attorney] and he's been great. He seems to be the veteran guy, [TOPA attorney], so I'm really happy with all the stuff that he did for us in the process. But gosh, if you're relying on three people, three professional lawyers to deal with all these TOPA cases in a city, that's not at all a viable thing."

In fact, the study noted approximately 50 lead attorneys, from 29 firms or organizations involved with TOPA deals in the past 17 years, but the resident's statement above reflects the difficulty some groups may find in getting an attorney. While there are far more than three attorneys working with tenants, about 44% of sales which identified an attorney were supported by one small law firm which has had 2-3 attorneys on staff at a time, suggesting a need for additional legal support.

Tenant attorneys with specific TOPA expertise are another critical part of the negotiation and development of agreements.

Tenant organizing/technical assistance organizations often reported feeling stretched to be able to support tenants due to their capacity, high demand, and the need for expertise in tenant organizing and TOPA. Organizers sometimes had to triage by focusing only on larger buildings, and during the COVID shutdown were extremely limited in the in-person organizing. The same economies of scale choices face organizers/technical assistance providers as developers; the time cost of a small building is similar to large buildings, meaning that organizing work in small buildings will have results for a smaller number of households.

Developer Partners and Development Agreements are critical:

A wide range of mission-driven and conventional developers have engaged successfully in TOPA projects by negotiating an assignment of tenant rights. The study data shows that **over 70 different developers/purchasers** have completed TOPA projects or have one in their pipeline. One noteworthy aspect of these deals is a written contract, or development agreement, negotiated between the purchaser and tenant association. This lays out very specific project outcomes potentially including: affordability (for both the existing tenants and future tenants), short term repairs and long term renovation, temporary relocation details, amenities, and buyouts.

CASE STUDY 15

Ft. Chaplin Park

Developer Partner New
to D.C. Affordable Housing

LOCATION

4221 E. Capitol St. NE – Ward 7

UNITS

549 units, 100% affordable with 30 year covenant

DEVELOPER

Standard Properties

TOPA NOTICES

8/26/15; Acquisition 9/30/16;
renovation completed in 2020



🎯 GOALS ACHIEVED

Preservation of one of District's largest apartment complexes with 100% unit affordability, in one of the largest tax-exempt bond and LIHTC housing transactions in D.C. history. New project-based Section 8 subsidy for 72 units was transferred into the District from out-of-state, in a deal the developer arranged with HUD. The tenant association played an active role in development planning, and tenant-in-place renovation kept the community intact. It also features the largest rooftop community solar photovoltaic system in D.C.

🔑 TENANT ASSOCIATION INVOLVEMENT

The Chaplin Hope Tenants Association exercised its TOPA rights, working with their attorney and Housing Counseling Services. It issued an RFP in November 2015, interviewed three developers and selected Standard Properties based on its affordability and resident services package, including a new 5,000-square-foot community center and annual payments for tenant association programming.

💰 FINANCING SUMMARY

The total development cost of \$96 million was financed by approximately \$58 million raised via tax-exempt bonds plus LIHTC equity; there was no DHCD loan.

🏠 AFFORDABILITY

Affordability is guaranteed for 100% of the units for 40 years for households earning below 60% AMI; 241 of the tenants in place at acquisition had a "rent assurance" that capped increases based on rent control rules. In addition, 72 units of project-based Section 8 subsidy were brought to the property for deeper affordability. The property previously had a LIHTC subsidy and this transaction extended and broadened that affordability.

Development consultants: For homeownership projects where tenants purchase the building as a limited equity co-op, a development consultant is essential to undertake the financing and planning work in lieu of a developer. The development consultant is hired by the tenant association and enables the residents to make major decisions based on sound advice. This is a niche field that requires real estate expertise combined with the ability to engage with residents, and currently only a few entities perform this work. DHCD maintained this capacity in the 1980s-90's through ongoing grant support to University Legal Services and other groups, but has not offered this support in recent decades.

Specialized financing tools, including the new Preservation Loan Fund: The fixed timelines, resident involvement and, sometimes, small scale specific to TOPA redevelopment projects present financing challenges. For co-ops, financing for tenant associations with little or no cash is required for contract deposits and pre-development planning work, and acquisition financing nearly always requires subsidy dollars which may take years to materialize. Creative financing sources may be needed not only by tenant co-ops but also by any developer lacking ready access to cash. The District has been fortunate to have a community of lenders who developed TOPA experience over the years, including the D.C. Local Initiatives Support Corporation (LISC), National Housing Trust, City First Enterprises, and Enterprise Community Partners.

The District government TOPA financing role for several decades included a streamlined DHCD acquisition program called the First Right Purchase loan. This was essentially deactivated around 2017. A new **Housing Preservation Fund** (or "Preservation Fund") program was then established based on recommendations from the D.C. Housing Preservation Strike Force using a mix of DHCD and private capital to fund acquisition loans. The program operates on a quick turnaround and allows for riskier high loan-to-value loans, both conducive to TOPA. The program utilizes private lenders D.C. LISC, Capital Impact Partners, and Low Income Investment Fund to perform the underwriting and closings

The effectiveness of the Preservation Fund is reflected in successful closings on 33 loans amounting to \$143.2 million in the first four years of operation (DHCD data through January 2023.) In particular, it has functioned well as a TOPA-support program: TOPA-related projects comprise 26 of those loans, lending \$120.6 million for acquisition of 1,967 affordable units representing 84% of all funds and 89% of units funded by DCPLF.

The imposing challenge ahead is for developers to identify affordable long term financing to repay these loans. A majority of Preservation Fund loans are still outstanding and have not yet been taken out with closings on new permanent funding, as exemplified in our case studies for the 3218 Wisconsin Avenue Co-Op and La Union Buena Vista Co-Op.



Ridgecrest Village

CASE STUDY 16

La Union Buena Vista Cooperative

Housing Preservation Fund Essential

LOCATION

3308-12 Sherman Ave. NW, Columbia Heights – Ward 1

UNITS

34

DEVELOPERS

La Union Buena Vista Co-op, Judy Meima consultant

TOPA NOTICES

3/30/21²¹; Acquisition: 11/23/22; renovation: TBD

GOALS ACHIEVED

A very active tenant association passed up buyout opportunities and persevered to purchase their building using the Housing Preservation Fund. The future plan is for a limited equity coop with 100% affordability and extensive renovation, predicated on getting future DHCD financing. “They have seen family and friends displaced, pushed out of the area into Maryland and Virginia. The co-op presents an option to stay, take control of the conditions, and to keep the rent affordable,” says the group’s tenant organizer from Stomp Out Slumlords.

TENANT ASSOCIATION INVOLVEMENT

The prior landlord intentionally allowed the property to deteriorate to encourage move-outs, and the poor conditions led the D.C. Department of Consumer and Regulatory Affairs to sanction the building owner in 2021. Tenants decided to pursue a co-op purchase so they could take charge of the building, improve it, and create future stability.

To pursue the co-op plan, tenants stayed unified in the face of the third-party purchaser’s buyout offers of \$5,000 to \$15,000. The tenant association obtained technical assistance and legal help for the purchase plan and conducted grassroots fundraising through GoFundMe and benefit concerts. They formed a cooperative to take title to the property in November 2022, and are undertaking critical repairs so they can hold out until additional financing is available.

FINANCING SUMMARY

The purchase was only possible by getting a \$6.6 million loan from LISC using the Housing Preservation Fund, which allows for more moderate initial interest costs for the building and provides funding for initial repairs. The long-term future will depend on obtaining permanent financing through the DHCD Housing Production Trust Fund.

²¹ This sale is not represented in the quantitative study since the Offer of Sale was issued after 2020.

Foundation grant funding is another creative financing source for TOPA projects and is valuable as equity that leverages other funds. Those projects which present a compelling case for keeping neighborhood diversity and maintaining existing communities in the face of a building sale historically have attracted funder support. The Amazon Housing Equity Fund made a major announcement in September 2022 of an unprecedented level of support for eight D.C. affordable housing projects, four of which are TOPA-based preservation. The 762 TOPA units receiving Amazon funds include projects in three different wards with four different developers.

DHCD permanent financing is fundamental. The adequacy of DHCD permanent financing for TOPA projects in the future or now in the pipeline remains the “elephant in the room” for successful completion of affordable projects. Most TOPA projects are designed to be 100% affordable in accordance with resident goals (over 85% of study projects with affordability were 100% affordable), which creates a need for substantial subsidy. Even if LIHTC and tax exempt bond loans are utilized, DHCD subsidy through the Trust Fund or HOME programs is still needed in the large majority of cases. Subsidy requirements have been exacerbated by recent years’ increases in property acquisition and construction costs, and co-op homeownership projects are not eligible to use LIHTC and therefore need more financing from DHCD.

Most TOPA projects are designed to be 100% affordable in accordance with resident goals which creates a need for substantial subsidy.

TABLE 11: TOPA PROJECTS FUNDED BY AMAZON HOUSING EQUITY FUND IN 2022

Project	Ward	# Afford. Units	Description
Holmead Place	1	99	The tenant association organized and assigned its rights to non-profit Wesley Housing. The Columbia Heights property with many Latinx families will be 100% affordable and get an affordability covenant for the first time, as well as a substantial renovation.
Mt. Pleasant Preservation Project	1	165 in 3 buildings	Three buildings on 16th St. NW have been sold as a group to non-profit developer Jubilee Housing after the three tenant associations selected them over a competitor developer. They will achieve 100% affordability and a substantial renovation. [See case study.]
Carver Terrace	5	320	After the TOPA notice, this tenant association organized, received three developer bids, and selected Jair Lynch Real Estate as a developer partner. The tenants negotiated a plan for continued LIHTC affordability, caps on current residents’ rents, extensive renovation, and annual contributions to sustain the tenant association.
Congress Heights Metro	8	179	After years of tenant struggle, TOPA rights were assigned to National Housing Trust and Standard Properties to replace existing buildings with a new apartment building. [See case study.]

FINDING #6

THERE ARE MAJOR CHALLENGES THAT IMPEDE AFFORDABLE DEVELOPMENT BASED ON TOPA RIGHTS.

6a. Bad faith actors abuse the assignment of rights process.

For some tenants, TOPA rights are short-circuited by misleading actors who abuse the TOPA process by pressuring tenants to sign their rights away prematurely. As reported by CBO staff, this is especially true in Wards 7 and 8, in smaller buildings, in more run-down buildings, and in recent years including during the pandemic when CBO safety protocols prevented in-person visits to buildings.

"Most small buildings in Southeast D.C., by the time we get there the Association is all 'papered up,' having assigned their TOPA rights without ever understanding them," says one tenant organizer. "There is a predatory nature to this, with implications for racial equity since it's concentrated in

Southeast neighborhoods." On the same day a TOPA notice is sent, or earlier, a landlord or third-party representatives may begin collecting signatures for an assignment or waiver of rights without any tenant education. While the city contracts with CBOs to educate tenants about TOPA rights, the 2-week lag in their notification about new TOPA notices means they are no match for aggressive real estate players or brokers who may know of the sale from the owner well in advance of the Offer to the residents.

Table 12 shows 16 recent cases which indicate abuse of TOPA rights assignment based on truncated timelines. CBOs say that abuse is signaled when the association files a "letter of interest" in 21 days or less, and/or the tenants or association files an assignment of rights (in five cases without having a tenant association registration) faster than 30 days after that.



TABLE 12: TENANTS OR TENANT ASSOCIATIONS WITH QUESTIONABLE REGISTRATIONS AND/OR ASSIGNMENTS (CHECKED WHERE APPLICABLE)

	ADDRESS	TOPA NOTICE DATE	REGISTRATION IN 21 DAYS OR LESS	ASSIGNMENT OR SALE IN UNDER 30 ADD'L DAYS	# UNITS	CBO REPORTING
1	604 Kennedy St NW	1/6/2020	✓	✓	17	TA assigned rights before LEDC arrived; broker organized tenants prior to the TOPA notice.
2	66 Webster, 65-97 Hawaii NE	4/8/2020	See note		72	Tenant was paid to collect signatures for assignment of TOPA rights; tenants did not learn of TOPA rights. OAG suit filed for tenant coercion into signing away right.
3	300 62nd St NW	4/8/2021	✓		15	TA letter of interest registered 5 days after offer. Landlord discouraged tenants from learning about TOPA rights.
4	808 Chesapeake St SE	10/20/2021	✓		14	Broker established TA, deceived tenants into assignment
5	307-11 Division St NE	12/8/2021	✓	✓	22	Assignment date is same as TOPA notice. Tenants were paid \$50 to attend a meeting in which TOPA was misrepresented.
6	5201 Sherrif Rd NE	4/7/2022		✓	12	TA assignment date just six days after notice.
7	5311 8th St SE	4/11/2022		✓	11	Assignment received just 3 days after notice; tenants received \$500
8	5105-9 F St SE	5/23/2022	✓	✓	24	TA assignment recived in 2 weeks
9	1715 Euclid St NW	6/6/2022		✓	5	Assignment on same day as Notice. DHCD also received a tenant waiver of rights notice.
10	1506 White Pl SE	7/6/2022		✓	8	TA registration and assignment on same date.
11	2020 19th Pl SE	7/6/2022	✓		29	TA organized by broker, assigned rights to the third party. Several tenants wanted to file a complaint but DHCD would not accept it as it was not signed by TA president.
12	1953 19th Pl SE	8/22/2022	✓		17	Tenants assigned rights to the third party before HCS could brief them on rights.
13	4256-64 Benning Rd NW	7/26/2022	✓	✓	27	TA registration and assignment filed on same day as Offer. The filed assignment included false meeting minutes; tenants report no votes occurred and that broker misrepresented TOPA.
14	118 + 124 Atlantic St SE, 125-133 Yuma St SE	4/14/2022		✓	54	Tenants assigned rights for \$250 after receiving misleading information from agents prior to receiving TOPA offer letter. TA registration later filed after assignment. HCS has worked with TA to revoke registration.
15	2474 Alabama Ave SE	After 7/25/22	✓		15	TA registration filed weeks prior to TOPA notice being sent and with blank date.
16	709 Massachusetts Ave NE	8/19/2022	✓	✓	8	Registration and assignment both received on same day as notice.
TOTAL UNITS					350	

Compiled from CNHED database and CBO records. In some cases it is unknown whether a tenant association or individual tenants assigned rights.

Improper tenant assignments played a role in the D.C. OAG suit against new owners of the “Hawaii-Webster Apartments” filed on January 31, 2022. The OAG complaint stated:

*“Defendants’ failure to maintain the Properties is consistent with a plan for constructive eviction of current tenants. ... Tenants suspect that Defendants’ failure to maintain the Properties is designed to displace them and pave the way for redevelopment of the Properties. **In fact, tenants were coerced into signing away their right to purchase the property as provided in the Tenant Opportunity to Purchase Act.** In the spring of 2020, prior to Defendants’ purchase of the Properties, an agent of Defendants visited the Properties and offered \$300 to one tenant to collect signatures of other tenants. The document tenants signed formed a Tenants’ Association and was written in English, even though most tenants speak Spanish. The Tenants’ Association never met and never held a vote. Defendants later submitted the document to the Department of Housing and Community Development as evidence that the Tenants’ Association assigned Defendants their rights to purchase the Properties.”*

This case was settled in December 2022, with the owners agreeing to make significant repairs to the property, keep tenants in place, accept a 25 year affordability covenant, and pay \$1 million to the District—the majority of which will be used to provide restitution to tenants²².

Abusive practices witnessed by CBOs include:

- Individual tenant signatures are collected door-by-door on a document described as “Tenant Association membership” sign-up or an Assignment form, but no tenant meeting is held. Signatures are fraudulently packaged as an official tenant association assignment of TOPA rights filed with DHCD.
- A tenant meeting is called after a sale notice, where the seller or seller’s broker will tell residents that they have zero chance of purchasing the building, and tenants sign away their rights at the meeting.
- Landlords use a trusted messenger to convince tenants to sign away TOPA rights without education on those rights. Some landlords are trusted by tenants, or long-term residents or building employees may be used to collect signatures.
- Monetary payoffs are part of most assignments, and these can deter follow up organizing after full information is available. One tenant group was gearing up to reverse their initial hasty assignment when a new payoff from the landlord snuffed it out.

“You don’t have \$1.8 million do you? How could you purchase this building?” is something a broker may say at such meetings, according to tenant organizers. Even if a building may be located in a redevelopment area, tenants don’t see that potential. Rather they see the dilapidated conditions in the building and wonder, *“Why would I want to buy this place with all the mold and rats?”*

Residents may be told they have an opportunity to stay in place, and since most people expect to have to move out if there’s a sale, this sounds like a benefit offered by the landlord, organizers say. (D.C. law already gives tenants the right to stay, under their same lease terms, after a sale.) *“Being offered \$500 to do nothing is compelling,”* says one tenant organizer. *“And people have bigger issues in their lives (family, jobs, health) than going to a bunch of meetings.”*

“Once you get a couple people to sign agreements, it takes a lot for other residents to resist the pressure to go along,” said a housing counselor. Once signatures are in hand, a resident selected by the landlord may well become the Tenant Association president who certifies the assignment documents. In one case a resident suffering from dementia was selected to sign off.

DHCD’s Co-Op and Condominium Conversion Office is responsible for enforcing the TOPA procedures around tenant association registration, assignment, and purchase. The situation in 2023 around TOPA rights assignment is *“There is no consistent standard about what documentation is needed for an acceptable assignment,”* states one tenant organizer, so DHCD oversight generally has not curbed such abuses. Some policies based on current law create ambiguity at best:

- A tenant association does not need to register its interest with DHCD before assigning its rights, leaving DHCD without a clear paper trail evidencing the existence of the association;
- An assignment of TOPA rights is not required to be registered with DHCD at all, so there is no public record (though some sellers do register in order to create a paper trail);
- Tenants who challenge the validity of an initial rushed assignment have difficulty gaining standing to make such a challenge if they don’t side with the registered TA president.

²² <https://oag.dc.gov/release/ag-racine-announces-first-its-kind-settlement>

OTHER APPROACHES TO EVADING TOPA

Over the past 40 years, property owners in the District have employed various tactics to try to evade TOPA or to limit its impact. Some strategies that property owners have historically used include trying to skirt the legal definition of a sale under TOPA—including just selling 95% of the ownership in so-called 95/5 sales, misclassifying the property, or challenging the tenant association’s legal standing. (See Appendix C for a full review of TOPA legal issues, and case studies of Congress Heights Redevelopment and Aspen Street Co-Op for examples.) The District has taken steps to close certain TOPA loopholes and to strengthen the enforcement of TOPA laws, yet challenges and controversies remain around portfolio sales, internal transfers, and other issues.



6b. Preserving affordable housing in small buildings is a difficult challenge.

Preserving affordability and improving housing conditions in small TOPA buildings (like all small buildings) is difficult because they lack economies of scale and financing tools like LIHTC and tax-exempt bonds are usually infeasible. Since half of all TOPA cases in our study period have **fewer than 15 units**, the TOPA response is substantially affected by this issue.

As one mission-driven developer explained,

“One interesting thing to highlight with respect to our TOPA work is that you know, initially we were doing much smaller deals. And over the years we have evolved to doing new construction [...] but also to be more discriminating, frankly, about what TOPA partnerships we want to pursue. Part of that is, you know, a practical one in that it takes just as much time to do a 40-unit deal as it does 140 units. And so there’s a kind of economies [of] scale and the other part of that is there’s just greater competition in the TOPA space now than there was when we started doing it.”

Several large developers—both mission-driven and not—argued that the smaller buildings are better suited to smaller organizations (“with less overhead”) and limited equity cooperative development. However, smaller developers point to the similar costs for large and small buildings as well as the difficulty of scoring well on the RFP²³. Residents of smaller buildings described the meetings they had with developers and funders who told them their building was too small to make the project financially successful, and the complexity of applying for DHCD’s competitive funding means there really is no “low overhead” approach to affordable housing.

A local non-profit lender said, “There always will be a scoring bias against small buildings; economies of scale will be rewarded...yet I think small building co-op purchases can still work.” Several TOPA projects have proceeded by pooling multiple small buildings into one project to create economies of scale and have viable applications for subsidy, particularly LIHTC.

²³ While it is outside the scope of this report, it is important to note that previous research suggests that small Limited Equity Cooperatives are no more or less likely to succeed because the time to organize, manage and maintain the building, find vendors and organize are roughly the same, but spread among a smaller number of residents. In some buildings, it means that most households have someone on the board at one time or another, regardless of their capacity.

6c. Expensive acquisition and development costs and scarce subsidies frustrate the TOPA process.

Costs to acquire a property have increased throughout the period covered by this study. In addition to the overall strength of the D.C. real estate market, high voucher rents available from the D.C. Housing Authority were frequently cited in interviews as a factor in increased acquisition costs. A set of purchasers have implemented a model of vacating affordable, rent-controlled housing through buyouts, dividing apartments to create more bedrooms, and then renting the apartments at significantly higher rents to voucher holders. The negotiated purchase price is predicated on this plan which then makes the building unaffordable to anyone not using this model.

Limited availability of affordable financing and the lack of predictable financing options impacts TOPA discussions and outcomes from the start.

In focus groups, it was common for residents and technical assistance providers to mention high sale prices as an impediment. One tenant association search for new purchasers meant it ran out of time on the TOPA “clock.”

“So, we organized, we got the extension. We went out looking for a new [partner,] got right up to the last day, because the people who first came, buyers that might have wanted to buy the building, said there’s a lot of work that needs to be done, and the money they’re asking for it is too much, and it would take too much to fix it and to also keep it affordable.”

Limited availability of affordable financing and the lack of predictable financing options impacts TOPA discussions and outcomes from the start. While HPTF has received significant funding recently, the scoring criteria and stiff competition in applying for funds may exclude some TOPA projects. When there are limited options for subsidy, the discussions around TOPA are affected from the outset. Residents may decide not to even form a tenant association. If they do, they may enter the search for a purchaser and negotiations understanding that their options are limited to maintaining the status quo with little chance of major repairs, or else negotiating a buyout. Lack of funds and predictability mean that there will be low interest from nonprofit purchasers and discouragement from development partners around LECs, especially for smaller buildings.

In an atmosphere of scarcity around DHCD resources, tenants may feel they have no valid development choices except to take a buyout to move. One mission-driven developer explained,

“Of course, without subsidy on the table at negotiations you can have the right but actually, you don’t have much right, because at the end of the day the bluff is clear. But at least you have the leverage of the buyout.”

A CBO organizer also noted:

“We’ve had a lot more tenants be interested in self-purchase [i.e. limited equity cooperatives] in the last year or two, and a lot of people have unfortunately just heard it’s not financially feasible like there is no guarantee or even likelihood that you could secure financing for this and so it’s really not an option. We try to pull in someone who knows more than we do, to evaluate the building’s finances to talk about what’s going on with DHCD and HPTF. But I think the lack of earmarked funding for self-purchase (co-op) really puts tenants at a disadvantage who want to exercise the TOPA rights for self-purchase.”

This year, while the HPTF still has \$100 million, the costs of housing and the threats to preservation have increased substantially. In other words, because the need has grown significantly over the past four years, the funds will not go as far. A mission-driven developer put it simply, “The acquisition costs are just so high that we’re just very worried about figuring out how to make all the numbers work.”

Exacerbating the issue is the prioritization of funds. In the DHCD FY 2023 Consolidated RFP, the funds focused on new construction over preservation, and a large majority of the DHCD projects currently in underwriting are new construction. See Recommendation #1.

6d. Clear, accessible information is often missing for tenants receiving a TOPA notice

Many tenants report they felt ill-equipped for TOPA from the first moment they learned about the building sale, not being familiar with TOPA rights or processes and having no easily accessible public information about TOPA.

As tenants explained in the focus groups, it is daunting to receive an offer of sale. While this packet includes a list of community organizations to contact for support, it is often a thick package which includes a signed sales contract. Many tenants understandably assume that the property has been sold. One resident described the large envelope with the TOPA offer:

"If I knew more about it way before, I probably wouldn't have been so scared of opening up that envelope. You know what I'm saying? I stuffed it in the back of the driver's seat, in the compartment in back. I rode that thing around before I opened it. 'What the hell is in here?' I said, 'You know what?' I parked somewhere, and I put my glasses on, and I said, 'I don't know what...' I said, 'All I know is you get a couple of dollars and you leave.' I said, 'So let me call me some friends that can break this down to us.'

Lack of information about the process was a common theme among tenants and there is a steep learning curve. In many cases, upon receiving an offer of sale, tenants are unaware of their rights under TOPA, they have not considered purchasing property with their neighbors, they may have little understanding of real estate, and they may not speak the same languages as their neighbors. Further, tenants in gentrifying neighborhoods often are feeling that they are being pushed out and will have to move. Tenants may have been living with poor housing conditions and want a change.

When asked what they wished they had known before starting the TOPA process, all the residents in the focus groups said they wanted training and information as early as possible. Residents also wished they had more access to information about the purchaser who is typically shielded by an LLC, putting residents at a disadvantage. Emblematic of that frustration was a board president who learned later they had put their trust in the wrong purchaser:

"So the two mistakes were: I did not ask, 'Who is your silent partner?' And I did not go see that building. Because when I went back last week, he had stopped working on it. We went and did the tour, and evidently the next day he stopped because nothing else had been done to it. I think he was really strategic and lying and created a persona, and created this thing and it wooed people. And we already knew that [buyer's name] guy had tried to get our building... So he's got a whole bunch of cases against him, people suing him



for stealing their money and not doing work and... So we already knew, we interviewed him, but we were like we're not going to take him, we're just giving him a chance to hang himself. So if we knew that (he) was a silent partner, we wouldn't have done it."

This lack of knowledge about bad actors—and the inability to know who the good actors are—was common. At one point during all three tenant focus groups, the residents would compare notes about the bad actors with whom they interacted. A handful rose to the top, but like the resident above, the potential buyer was not apparent until after they had assigned their rights.

What was also clear across the resident experiences was that they were doing significant research and work to preserve their buildings and communities because there was not enough public information about the process, actors, funding and peer experiences. While the network of organizers, technical assistance providers, attorneys and others are critical, the lack of easily accessible information leaves tenants vulnerable to exploitative deals that neither benefit them, nor preserve affordability.

FINDING #7

THE TIMELINE TO SELL AN OCCUPIED BUILDING IS EXTENDED BY APPROXIMATELY 5 MONTHS.

TOPA introduces a process, including notification requirements, time for a tenant association to organize, explore options, negotiate, and find financing that when utilized creates delays for multifamily sales. The primary intention of TOPA is to safeguard the rights of tenants and provide them with the opportunity to have a collective voice in the future of their housing following a sale. However, for tenants to utilize TOPA there are often, necessarily, extended timelines for property sales.

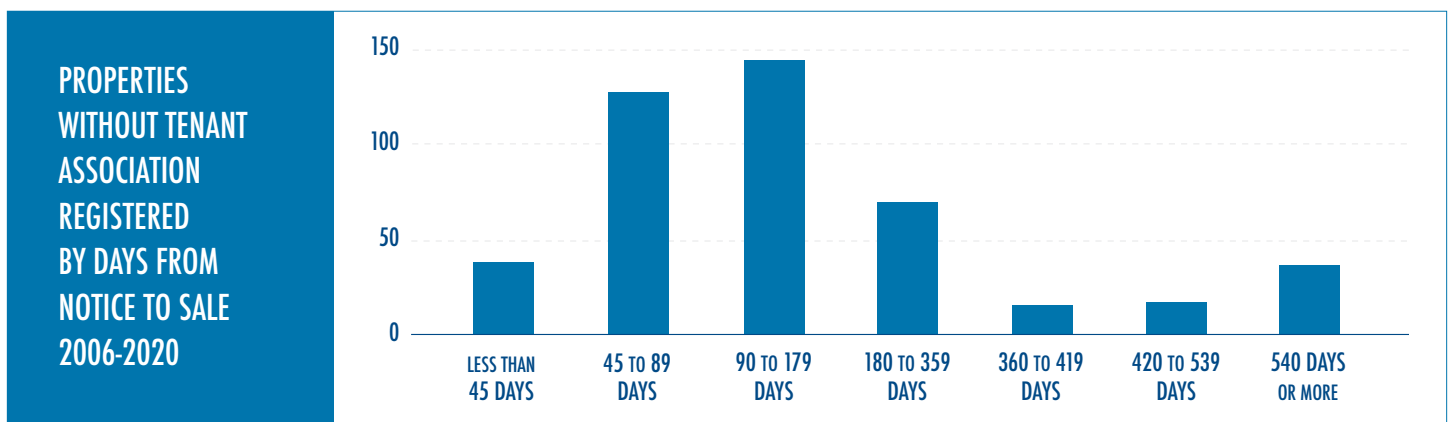
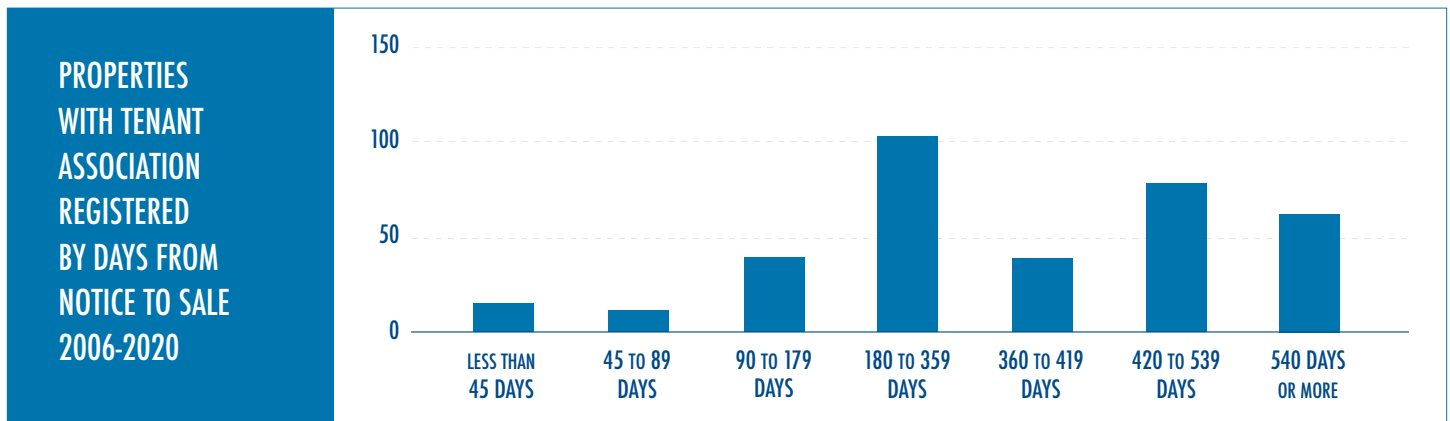
For this report, we conducted a review of various property size typologies to understand the impact of TOPA on the timeline to sell a property where Offers of Sale were issued between 2006 and 2020, by calculating the time between the Offer of Sale (notice) being provided to the tenants and the closing (sale). The analysis only includes notices with an actual sale date reported, excludes 88 notices with sales between March 2020 and April 2023 which were affected by TOPA tolling (the extension of the TOPA timeline

due to COVID), and removed the top and bottom 10% of observations to reduce influence of outliers.

Our analysis showed that properties where a tenant association registered did take longer to sell compared to properties of similar size where tenants did not form a tenant association.

On average, properties with a tenant association take 330 days to sell while properties without tenant associations take 168 days, or an average of 162 additional days or approximately 5.3 additional months. Of the 351 properties with tenant associations, 67 (19.08%) sold in under 180 days and 169 (48.15%) within one year, while 309 (69.13%) of the 447 properties without TAs sold in under 180 days and a total of 378 (84.56%) sold within 360 days.

Analysis of the *median* days to sale for properties with 15+ units yields a slightly higher delay factor. Where tenants registered the median time to settle was 326 days compared to 124 days in properties without a registered tenant association. These properties average 335.47 days and 176.88 days to



TOPA Timeline Limits + Benchmarks

TOPA TIMELINE PROVIDES LIMITS AND BENCHMARKS FOR TENANT RESPONSE

INITIAL ORGANIZING PERIOD – 45 DAYS

After receipt of a TOPA offer of sale, to respond, tenants must organize a tenant association (if one does not exist) representing over 50% of occupied units, legally incorporate the TA, and register a Letter of Interest in pursuing TOPA with DHCD. If there is an existing, registered, tenant association, the tenants have 30 days to register. *If registration is not made within this time, TOPA rights terminate.*

FEASIBILITY AND CONTRACT EXECUTION PERIOD – NEXT 120 DAYS

Determine best form of ownership; seek development partner (if rental); determine total cost of redevelopment including renovation; raise earnest money deposit (5% of purchase price); sign a purchase contract. *If a contract cannot be signed within this timeframe, TOPA rights terminate.*

FINANCING/ACQUISITION PERIOD – NEXT 120-240 DAYS

Development team prepares all due diligence to document development plan and renovation; apply for financing (generally a short term bridge loan); hire property management for new ownership; purchase the property. *If purchase cannot be closed within maximum 120 days (or 240 days if a financing letter of interest is obtained), TOPA rights terminate.*

sale respectively. This is a difference of 158.59 days, just over 5 months. Nearly 48% of these properties with TAs sold within one year compared to almost 84% of properties without TAs.

In larger properties of 50+ units the story is the same: properties with a registered tenant association averaged 332.17 days to sale versus 169.94 days for 50+ properties without a registered tenant association, an additional 162.23 days, or about 5.3 months. This trend is the same across properties of various sizes including those with less than 15 units and those with less than 50 units. Over half (51.46%) of these properties with a registered TA sold within a year. Of those 50+ unit properties without a registered TA 86.67% sold in less than 360 days.

One significant reason for time delays is that TOPA allows critical time for tenants to evaluate the offer, consider their options, and potentially pursue their interest in purchasing. While this is a crucial tenant protection mechanism, it can slow down the sales process if tenants choose to exercise their rights under TOPA.

It is worth noting that the owner/ third party timeline usually starts well before the offer of sale is provided to the tenants.

When the TOPA offer is accompanied by a third party sales contract (which it most often is) the purchaser has done their due diligence, commenced the search for financing, and negotiated the contract. The owner may, under TOPA, provide the tenants an offer of sale when they decide to put the building on the market but owners generally choose to have the TOPA timeline start once they have a third party contract.

As a side note: focus group discussions related to the TOPA timeline showed the impacts of the pause (tolling) of the TOPA timeline during the COVID-19 emergency. Several developers commented on the importance of predictability in the regulations and the difficulty in securing outside equity investment in 2021-2023 given what they characterized as extreme delays in settlement. Given that this temporary pause is now over, this should not be an ongoing concern.

Balancing the needs of tenants and property owners while minimizing delays remains a challenge in preserving a fair and equitable rental landscape in the District. While the data shows that TOPA may cause transactions to take longer to close, the data in this study shows that TOPA is effective in meeting its goals in the public interest. .

BUILDING OWNER CONCERNS, AND TOPA AS A SCAPEGOAT

Recently, particularly during 2023 policy discussions around the redevelopment of downtown, current challenging market conditions for commercial real estate have been partially attributed to TOPA. However, these challenges, which also are being experienced in other major cities, are not necessarily directly attributable to TOPA. The far-reaching effects of the COVID-19 pandemic on work and shopping patterns are felt nationwide and play a major role in commercial real estate market changes, in addition to major interest rate increases since 2022. In the District, a specific one-time COVID policy to extend all TOPA sales timelines had the effect of delaying many sales planned for 2021-22, which coincided with interest rate increases. Further, the District hit its tax-exempt bond financing cap, shifting the way D.C. provides financing to affordable rental projects. All these factors have conspired to make multifamily development either more costly or difficult to obtain financing, elongating timelines, etc, yet basic TOPA policy has remained unchanged and these shifts are not a direct result of TOPA.

RECOMMENDATIONS

RECOMMENDATION #1

Strengthening TOPA Affordable Housing Preservation through Realigned DHCD Funding Priorities

The historical under-prioritization of subsidy for preservation in TOPA projects has hindered their full potential.

D.C. DHCD should align funding priorities to better utilize TOPA to both prevent displacement and preserve affordable housing, specifically by reinstating First Right Purchase Program (FRPP) loans and adjusting scoring criteria in the Qualified Allocation Plan (QAP) to effectively support and incentivize preservation and TOPA efforts.

From the outset of TOPA processes, the availability of preservation options is essential. The absence of viable preservation funding options can deter potential partners from bidding, inadvertently steering tenants towards buyouts, leading to displacement. Historically, preservation projects have been relegated to lower prioritization, leading to an imbalance between preservation and new construction projects. Despite this trend, the latest 2023 DHCD Notice of Funding Availability (NOFA) underscored the importance of small buildings and cooperatives. These positive strides must be leveraged to ensure preservation—and the prevention of displacement—in DHCD funding priorities.

1a. To bolster preservation, it's crucial to enhance the scoring system in the QAP:

Currently, preservation projects face scoring challenges that new construction projects do not, due to their unique circumstances. We propose a substantial increase in scoring for preservation projects under relevant categories, such as Inclusive and Equitable Housing, Maximizing Impact of DHCD Resources, and Place-Based Priorities. This recalibration should recognize the importance of preserving existing

affordable housing stock and preventing displacement of low- and moderate-income tenants. There should be higher point premiums for tenant associations collaborating with developers on affordable rental housing or co-op housing.

In short, DHCD funding priorities need a realignment in order to intentionally support future TOPA success.

1b. Enhancing the First Right Purchase Program (FRPP):

The District should take steps to reconfigure the First Right Purchase Program (FRPP) and focus it on small properties (5-49 units), a critical component that facilitates the preservation of affordable rental housing and the creation of Limited Equity Cooperatives (LECs). The FRPP has historically been reliant on discretionary allocation from the Housing Production Trust Fund (HPTF). DHCD should overhaul the FRPP to empower tenant organizations in preserving or establishing affordable housing in smaller rental properties.

The current D.C. Housing Preservation Fund (HPF) terms might not be accessible for properties with characteristics such as high acquisition costs, low rents, and significant deferred maintenance, and it requires additional financing applications for permanent funding. The proposed restructured FRPP would cater specifically to **multifamily properties with 5-49 units**, focusing on both affordable rental housing and limited or shared equity cooperative homeownership.

FRPP loans provide an essential permanent acquisition solution for complex projects that don't align well with the current Consolidated Request for Proposals (RFP) criteria. These projects often involve low-income tenants, requiring substantial public financing (often over 75%) due to rent limitations, limited debt capacity, and need for critical repairs and extensive renovation. As a result, these target projects do not score well in the RFP. Further, the unique nature of small TOPA projects involving tenant organizations and small consultant entities necessitates streamlined and cost-effective development processes.

1c. Land Lease Program:

The District could explore a more fulsome land lease program under the land trust model, as a means of covering the acquisition cost attributable to land value. By extending this policy (currently used for larger projects) to cover smaller projects, either limited equity cooperatives or rentals, it would bring one additional tool for TOPA-based development.

Safeguard Tenant Rights and Enhance Accountability through TOPA Reform

As discussed in Finding #6, TOPA abuse and bad actors remain a significant concern, with property owners and developers working to undermine the intent of TOPA. To address these issues and reinforce tenant protections, **we propose: a “cooling off” period, increased transparency, stronger regulations on buyouts, and improved housing code enforcement.**

2a. Create a “Cooling Off” Period:

To counter the abuse of early buyouts and coercive assignments which are carried out before CBOs can provide tenant education, the District should institute a “cooling off” period so that a tenant organization or one or more tenants may not validly assign rights until at least 45 days after an offer of sale. This period would allow tenants the necessary time to make informed decisions without facing undue pressure. This approach aligns with consumer protection principles and promotes fairness in transactions.

2b. Prevent Conflicts of Interest and Predatory Practices:

Owners, purchasers, or others with a financial or other interest in the property should not interfere with the tenants' exercising their TOPA rights. This includes, but is not limited to, negotiating with tenants within the first 15 days following the Offer of Sale (when CBOs do not yet have sale information). Any groups reaching out to tenants related to TOPA must disclose their roles and any financial connections and inform the tenants of their right to training from a CBO. These efforts will enhance transparency and protect tenants from predatory practices.

2c. Strengthen Tenant Association Education:

Tenant associations should be required to meet at least once with a DHCD-funded Community-based Organization (CBO) before being permitted to assign their rights. This collaboration would involve the CBO verifying the legitimacy of the process, ensuring tenant interests are safeguarded. This requirement could be tailored to buildings with a majority of units affordable to individuals earning 80% of the Area Median Income (AMI) or less.

2d. Enhance Transparency and Accountability by Establishing Mandatory Registration of Buyouts, Sale Prices, and Development Agreements:

To ensure transparency and accountability, all buyouts, sale prices, and development agreements should be registered with the District within 30 days of their signature. This requirement would prevent undisclosed financial arrangements and provide a clear record of those agreements. The publicly accessible database of TOPA notices should include relevant information such as address, reason for notice, unit count, sales price, buyout information, rent control related information, and subsidy details, as well as:

1. *Restricted Sharing of Offer of Sale Registrations:* DHCD should share Offer of Sale registrations exclusively with DHCD-funded CBOs to minimize predatory actors contacting tenants.
2. *Buyout Policy with Standardized Documentation:* Implementing a new buyout policy that mandates the use of a standardized form signed by tenants taking a buyout would enhance consumer protection. This form should contain clear language explaining the implications of the buyout and its effects on tenant rights. Filing these forms with the D.C. government would establish a formal record of such transactions, promoting transparency and accountability.

2e. Improve Housing Code Enforcement:

To address poor housing conditions—the driving force behind many tenant buyouts—enhanced enforcement of the housing code is essential. Improved living conditions can decrease tenant motivation to opt for buyouts. While beyond the immediate scope of this study, exploring options for funding repairs should be considered in tandem with stricter housing code enforcement to ensure tenants have improved living conditions and viable housing alternatives.

RECOMMENDATION #3

Expand Access to Legal, Organizing and Technical Assistance Support

To enhance tenant protections and expand the reach of TOPA support, D.C. should take proactive steps to invest in law clinics and provide increased budget support to CBOs. These measures are crucial in fostering a network of knowledgeable legal professionals and ensuring broad-based representation, particularly in underserved communities.

3a. Explore legal capacity-building related to TOPA:

DHCD should convene stakeholders to explore how to build legal capacity related to TOPA. In the past, the D.C. Bar has sponsored workshops for pro bono attorneys, law school legal clinics have developed TOPA capacity, legal service providers have provided pro bono attorneys, and CBOs have had funding to pay TOPA related legal fees.

3b. Expansion of TOPA Technical Assistance Grants:

In order to provide support to a larger share of tenant groups and ensure equitable representation, the District should expand TOPA technical assistance grants with a focus on organizations and support in Wards 7 and 8, to address disparities in access to information and resources. This strategic allocation of resources will enable CBOs to effectively navigate TOPA processes, guide tenants through their rights, and offer essential support for preserving affordable housing. Additionally, earmarking funds for new and emerging organizations will contribute to the growth of a robust network of support. Any new organizations should be paired with an experienced CBO for support, training, and coordination.

By investing in law clinics and expanding budget support for CBOs, the District of Columbia can significantly amplify its commitment to tenant rights and affordable housing preservation.



Create and Provide Early Tenant Information and Outreach for Awareness about TOPA

Interviews with tenants, developers and CBOs highlighted that there exists a significant gap in tenant awareness and understanding of the TOPA process. To address this issue, we propose a comprehensive approach that combines digital tools, community engagement, and targeted education to empower tenants and ensure their informed participation in TOPA.

4a. Clarify language and presentation of the Offer of Sale:

The Offer of Sale should be revised to clearly explain that the tenant has the right to purchase the accommodation and that tenants are entitled to no-cost technical assistance and training on their rights by a technical assistance provider approved by the District, with a list of eligible providers and their contact information.²⁴ The offer should clarify that even if there is a third party sales contract the property has not been sold yet and that tenants do not have to move.

4b. Developing an Informative and Accessible Website:

1. *Creation of a Plain and Multi-Language Website:* D.C. DHCD should collaborate with funded CBOs and other stakeholders to develop an easily accessible website. This platform will provide clear and comprehensive information about TOPA, designed with user-friendly text and graphics. The website's features would include:

- *Tenant Rights Reminder:* Reassuring residents that they are not obligated to relocate.
- *TOPA Process Explanation:* Clear guidance on tenant association rights, main procedure, and timelines.
- *Technical Assistance Resources:* Linking tenants to

CBOs that offer technical support throughout the TOPA process.

- *Acquisition Funding Information:* Details about acquisition funding from the Housing Preservation Fund, as well as long-term financing through the Housing Production Trust Fund (HPTF) and Low-Income Housing Tax Credit (LIHTC).
 - *Qualified Developer List:* A directory of qualified developers committed to affordable housing and meeting specific criteria.
 - *Key Documents:* Sample tenant association bylaws, development agreements, and best practice expectations for developers and attorneys.
 - *Buyout Calculator:* A tool to help tenants make informed decisions about the value of buyouts compared to their current rent.
2. *Pre-Launch Resident Review:* Before launching the website, residents should be invited to review its content to ensure its clarity and effectiveness. This resident feedback will help refine the website's content, making it more user-friendly and accessible.

4c. Community-Grounded Outreach Pilots:

Pre-Notification Tenant Training: A community-grounded pilot program should be established to provide targeted tenant training in buildings and areas at high risk of displacement and sale. This program will educate tenants on their rights, the TOPA process, rent control, funding opportunities, and avenues to report poor housing conditions. (This may already have begun on a limited basis in Wards 7 and 8, but any such efforts need incremental budget support from DHCD to maintain them.) CBOs' current broad outreach through schools, religious institutions, or social-service agencies also should be continued.

Broad Social Media Campaigns: To reach a diverse audience, particularly young tenants, families, and those in underserved areas such as East of the River (EOTR), broad social media campaigns are essential. Platforms like Snapchat, Instagram, TikTok, and others should be harnessed to disseminate educational content in a visually engaging manner to bridge information gaps.

Innovative Public Information Campaigns: Other new, and continuing, vehicles for TOPA tenant education could include advertising on buses, metro, bus stops, sporting events, or public service ads.

²⁴ DHCD has recently updated the TOPA notice language to improve clarity. This recommends going further in that direction.

RECOMMENDATION #5

Adopt and Fund an Outcome-Focused Data Collection and Analysis Regime and Annually Publish the Collected Data

As discussed in the Methodology section of this report, data about the frequency or outcomes from tenants' use of TOPA rights has never been collected on a comprehensive basis before now. This study undertook a bottom-up data gathering effort from the community organizations, attorneys and others who work with TOPA to document these outcomes as well as using extensive interviews. In the vacuum left by the lack of this information, misconceptions have persisted about TOPA's role in contributing to affordable development in the District.

Data tracking and analysis play a crucial role in the effectiveness and efficiency of government programs. Regarding TOPA, better data tracking and analysis could contribute to better decision-making, resource allocation, accountability, and overall program success. It is recommended that the District fund the creation and implementation of a TOPA data tracking and analysis regime within the Department of Housing and Community Development.

This does not presume that data is not collected. This is best described by Glenn Hubbard, in the book *Moneyball for Government*:

"When we say that the government lacks evidence that many programs work, we don't mean that it lacks data on those programs. We collect a lot of data... When it comes to government programs, we often have a lot of data about what they cost or how many people they employ—what are often called inputs. We may also know how many people they serve and in what ways—often called outputs. The trouble is that these data don't often tell us much about how the program is (or isn't) changing people's lives."

The enhanced, intentional, tracking of TOPA data will provide the District with accurate and timely information about the implementation and outcomes of associated programs and funding sources. By setting clear metrics and benchmarks, DHCD can measure the success and impact of TOPA.



RECOMMENDATION #6

TOPA Improvement Task Force

The District continually strives to enhance its efficiency, effectiveness, and responsiveness. Implementing recommendations and conducting process improvements are linchpins of this endeavor. This recommendation proposes the formation of an ad hoc multi-party task force as a powerful means to tackle such challenges and navigate the intricacies of implementation.

It is recommended that this task force be made up of a cross-sector group of five to nine members, including but not limited to, tenants, developers (private and non-profit), CBO representatives, TOPA attorneys, and other knowledgeable industry professionals. The District should seek and appoint a skilled leader or co-leaders to guide the task force. This task force would be charged with assisting the department in adopting the other recommendations in this report as well as looking further at TOPA to make internal process improvements.

The District should conduct stakeholder mapping by identifying key stakeholders relevant to the recommendations or process improvements including stakeholders from various backgrounds, sectors, and disciplines to ensure a comprehensive understanding of the issues at hand. A multi-party task force encourages the exchange of ideas that may not emerge within traditional government structures. The convergence of different viewpoints can spark creativity and explore unconventional solutions. Complex challenges often require holistic solutions that transcend departmental or sectoral boundaries.



Due to the lack of TOPA-related data analysis and outcome specific information, various assumptions about TOPA's success, or lack thereof, have permeated public discourse in the District. Collaborative efforts among stakeholders who may not typically interact can build bridges and foster a culture of cooperation. The task force's collaborative nature may strengthen relationships and create a foundation for future joint initiatives. It is hoped that the data-driven findings and recommendations in this report can catalyze a well-informed decision-making process that is more likely to yield practical and sustainable solutions for implementation and process improvement.

When process improvement is coupled with a regular, refined data-collection strategy, program and resources can be maximized to develop an effective and efficient program.

GLOSSARY OF KEY TERMS

CBO	COMMUNITY BASED ORGANIZATION
CDBG	COMMUNITY DEVELOPMENT BLOCK GRANT
DHCD	D.C. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DCHFA	D.C. HOUSING FINANCE AGENCY
DOPA	DISTRICT OPPORTUNITY TO PURCHASE ACT
EOTR	EAST OF THE RIVER
FRPP	FIRST RIGHT PURCHASE PROGRAM
HPTF	HOUSING PRODUCTION TRUST FUND
HPF	HOUSING PRESERVATION FUND
HUD	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
LEC	LIMITED EQUITY CO-OP
LISC	LOCAL INITIATIVES SUPPORT CORPORATION
LIHTC	LOW-INCOME HOUSING TAX CREDIT
MFI	MEDIAN FAMILY INCOME
NOFA	NOTICE OF FUNDING AVAILABILITY
OAG	(D.C. OAG) OFFICE OF ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA
TOPA	TENANT OPPORTUNITY TO PURCHASE ACT
QAP	QUALIFIED ALLOCATION PLAN

APPENDICES

APPENDIX A

Ward by Ward Tables of Affordable Projects

WARD 1 – TABLE OF AFFORDABLE PROJECTS

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
08/12/2008	07/01/2010	2001 15th Street NW	Paul Laurence Dunbar Apartments	266	171	Yes	Yes				
12/11/2008	07/07/2009	3511 11th Street NW		18	18					Yes	
10/08/2009	11/05/2009	1111 Columbia Road NW		40	40					Yes	
11/13/2009	08/02/2010	2325 15th Street NW	Adam Gardens Towers	73	73					Yes	
12/15/2009	05/28/2010	2517 Mozart Place NW		37	37					Yes	
02/24/2010	10/29/2010	1430 Belmont Street NW	The Milestone on Belmont	57	48	Yes					
03/09/2010	10/29/2010	2922 Sherman Avenue NW	New Beginnings Co-Op (sold to E&G pool and renamed the Milestone on Sherman)	15	15	Yes		Yes			
03/11/2010	10/29/2010	3121 Mount Pleasant Street NW	Milestone Apartments	21	21	Yes					
05/10/2010	01/21/2011	1349 Kenyon Street NW		191	191					Yes	
08/06/2010	12/09/2011	1346 Park Road NW		28	28					Yes	
10/27/2010	08/12/2011	3620 16th Street NW		82	82					Yes	
11/19/2010	09/01/2011	2359 Ontario Road NW		54	54					Yes	
05/17/2011	04/09/2012	1841 Columbia Road NW	Adams Morgan Apartments	112	112					Yes	
03/07/2012	01/29/2014	1919 Calvert Street NW		14	14			Yes		Yes	
05/31/2012	01/26/2013	1474 Columbia Road NW	The Maycroft	67	67	Yes	Yes	Yes	Yes		
06/18/2012	09/26/2013	1444 V Street NW	Partner Place	48	48	Yes	Yes	Yes			
07/10/2012	09/09/2013	1821 Summit Place NW	Park East Apartments	86	86					Yes	

WARD 1 – TABLE OF AFFORDABLE PROJECTS (continued)

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
07/10/2012	05/07/2013	2637 16th Street NW	Park Meridian	77	77					Yes	
07/31/2012	05/23/2013	3132 16th Street NW	Sarbin Towers Apartments	64	64					Yes	
08/03/2012	05/23/2013	3150 16th Street NW	Park Marconi Apartments	44	44					Yes	
11/15/2012	07/10/2013	3055 16th Street NW	Richman Towers	57	57					Yes	
03/07/2013	06/13/2013	3145 Mount Pleasant Street NW	The Deauville/ Monseñor Romero	105	63	Yes					
09/06/2013	08/12/2014	1829 13th Street NW	The Logan on 13th	14	14					Yes	
01/13/2014	03/25/2015	1620 Fuller Street NW	Embassy Towers	81	81					Yes	
04/18/2014	12/09/2015	1881 3rd Street NW		15	15					Yes	
10/09/2015	02/15/2017	2524 17th Street NW	Glenn Arms	58	58	Yes	Yes	Yes		Yes	
11/02/2015	09/30/2016	1440 Chapin Street NW	The Catherine	28	28					Yes	
03/21/2016	12/27/2016	3115 Mount Pleasant Street NW		30	30					Yes	
05/06/2016	08/17/2016	3453 14th Street NW		5	5					Yes	
09/06/2017	08/26/2019	2384 Champlain Street NW		30	30					Yes	
10/30/2017	03/31/2023	1339 Harvard Street NW	Columbia Heights Village	406	406	Yes	Yes				
12/14/2017	10/30/2018	1460 Euclid Street NW		33	33	Yes	Yes	Yes	Yes		
12/19/2017	10/22/2018	3126 16th Street NW		17	17					Yes	
07/17/2018	01/11/2019	1921 Kalorama Road NW	The Policy	61	61					Yes	
12/21/2018	09/30/2019	1650 Harvard Street NW	Harvard Hall	166	166					Yes	
08/25/2020	03/13/2023	2371 Champlain Street NW	Carlton Terrace	33	33					Yes	

Notes: Sales dates may be approximate, properties may include other addresses beyond the reference address, and the subsidy tally is for forms of subsidy added or preserved.

WARD 2 – TABLE OF AFFORDABLE PROJECTS

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
08/23/2006	10/21/2008	1121 24th Street NW	Tiverton	46	46					Yes	
12/19/2006	09/28/2007	1416 R Street NW		127	127	Yes					
08/08/2007	04/04/2008	1722 19th Street NW	Sedgewick Apartments	89	89					Yes	
01/14/2008	02/01/2008	1631 S Street NW	The Shelburne Apartments	63	63					Yes	
10/20/2010	05/18/2011	1500 Massachusetts Avenue NW	1500 Mass Apartments	565	565					Yes	
03/09/2011	11/15/2011	1111 Massachusetts Avenue NW	Mass Place/ Burke Park	160	160	Yes					
02/01/2012	07/30/2012	1631 S Street NW	The Shelburne Apartments	63	63					Yes	
02/01/2012	07/30/2012	1722 19th Street NW	Sedgewick Apartments	89	89					Yes	
07/10/2012	06/12/2013	1610 16th Street NW	Ravenel Apartments	63	63					Yes	
03/14/2013	11/20/2013	1706 T Street NW	The Shelby	25	25					Yes	
03/06/2015	11/16/2015	1803 19th Street NW		10	10					Yes	
02/02/2016	08/29/2016	1711 T Street NW		11	11					Yes	
02/05/2016	04/28/2017	1111 Massachusetts Avenue NW	Mass Place/ Burke Park	160	160	Yes		Yes			
02/16/2017	12/22/2017	800 6th Street NW	Wah Luck House	162	152	Yes	Yes				
04/13/2018	06/30/2020	1433 T Street NW	The Waring	67	67					Yes	
06/07/2019	12/18/2020	1424 R Street NW	Ritch Homes	42	42	Yes	Yes				
01/10/2020	12/31/2020	1722 19th Street NW	The Sedgewick	89	89					Yes	
10/09/2020	01/13/2023	933 N Street NW	The Henrietta	39	39					Yes	

Notes: Sales dates may be approximate, properties may include other addresses beyond the reference address, and the subsidy tally is for forms of subsidy added or preserved.

WARD 3 – TABLE OF AFFORDABLE PROJECTS

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
12/17/2010	05/01/2012	3201 Wisconsin Avenue NW	Adams Cathedral	74	74					Yes	
03/07/2011	10/24/2011	5425 Connecticut Avenue NW	La Reine	95	95					Yes	
01/09/2013	02/10/2014	3737 Legation Street NW	Legation House	38	38					Yes	
08/01/2013	06/23/2014	2900 Connecticut Avenue NW	South Cathedral Mansions	213	213					Yes	
01/13/2014	05/21/2015	3945 Connecticut Avenue NW	Tilden Hall	103	103					Yes	
05/06/2016	10/19/2016	4569 Macarthur Boulevard NW		7	7					Yes	
09/10/2018	09/26/2019	3624 Connecticut Avenue NW		39	39					Yes	

Notes: Sales dates may be approximate, properties may include other addresses beyond the reference address, and the subsidy tally is for forms of subsidy added or preserved.



CNHED's 2015 Housing for All Rally

WARD 4 – TABLE OF AFFORDABLE PROJECTS

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
07/07/2006	04/20/2010	130 Webster Street NW	Webster Gardens	54	54	Yes					
01/23/2007	03/05/2008	1336 Missouri Avenue NW	Walden Commons	142	142					Yes	
08/09/2007	09/23/2008	1334 Fort Stevens Drive NW	1337 Fort Stevens	103	103					Yes	
07/09/2009	12/20/2010	1444 Rock Creek Ford Road NW		66	66					Yes	
10/09/2009	06/24/2010	7019 Georgia Avenue NW	Dahlia Apartments	70	70					Yes	
10/22/2009	01/04/2011	3800 New Hampshire Avenue NW	New Quin Apartments	108	108					Yes	
12/15/2010	08/17/2011	3701 16th Street NW	Pershing Housing	59	59					Yes	
01/28/2011	05/21/2012	5810 Blair Road NW		13	13					Yes	
02/16/2011	01/10/2014	724 Madison Street NW		14	14					Yes	
02/24/2011	12/29/2011	1441 Somerset Place NW		28	28					Yes	
03/09/2011	11/15/2011	1339 Fort Stevens Drive NW	Fort Stevens Place	59	59	Yes					
03/09/2011	11/15/2011	6676 Georgia Avenue NW	Takoma Place/ Aspen Court	90	90	Yes					
03/09/2011	11/15/2011	930 Randolph Street NW	Petworth Place/ Petworth Station	88	78	Yes					
04/04/2011	10/04/2012	3728 New Hampshire Avenue NW	New Hampshire House	21	21					Yes	
03/02/2012	09/04/2013	7436 Georgia Avenue NW	7440 Georgia Avenue	16	16					Yes	
03/02/2012	01/22/2014	7444 Georgia Avenue NW		21	21					Yes	
05/04/2012	01/03/2013	4526 13th Street NW	Buchanan	17	17					Yes	
05/10/2012	08/12/2013	7701 Georgia Avenue NW	Juniper Courts	96	84	Yes		Yes			
07/31/2012	02/21/2013	704 Jefferson Street NW	710 Jefferson St Apartments	17	17					Yes	
08/09/2012	11/21/2013	1388 Tuckerman Street NW	Vizcaya	18	18	Yes		Yes			
08/09/2012	11/21/2013	5811 14th Street NW		90	90	Yes		Yes			
08/09/2012	11/21/2013	5922 13th Street NW	Valencia Apartment Homes	32	32	Yes		Yes			

WARD 4 – TABLE OF AFFORDABLE PROJECTS (continued)

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Coop
10/31/2012	12/19/2012	3921 Kansas Avenue NW		23	23					Yes	
12/21/2012	09/13/2013	614 Longfellow Street NW	The Kingston	23	23			Yes		Yes	
01/25/2013	03/18/2014	734 Longfellow Street NW		42	42	Yes		Yes			
05/29/2013	07/26/2013	5940 Piney Branch Road NW	Jay Joe Barry	31	31	Yes		Yes			
09/17/2013	04/29/2015	716 Madison Street NW		12	12					Yes	
09/17/2013	04/29/2015	720 Madison Street NW		14	14					Yes	
09/17/2013	04/06/2015	723 Jefferson Street NW		10	10					Yes	
09/17/2013	08/15/2014	806 Longfellow Street NW		14	14					Yes	
09/17/2013	08/18/2014	810 Longfellow Street NW		13	13					Yes	
11/21/2013	04/02/2015	1370 Fort Stevens Drive NW		18	18	Yes		Yes			
03/07/2014	08/11/2017	5400 5th Street NW	New Beginnings	12	12	Yes		Yes			
08/08/2014	06/29/2015	1371 Peabody Street NW		14	14					Yes	
08/22/2014	06/29/2015	1444 Rock Creek Ford Road NW	The Rockford Apartments	66	66					Yes	
12/23/2014	02/02/2016	812 Jefferson Street NW	Homestead	55	45	Yes		Yes			
02/11/2015	03/03/2016	4526 13th Street NW	Buchanan	17	17					Yes	
04/17/2015	09/16/2016	804 Taylor Street NW		39	20	Yes		Yes			
07/08/2015	03/04/2016	7436 Georgia Avenue NW	Sheperd Apartments	16	16					Yes	
07/29/2015	08/12/2016	53 Missouri Avenue NW		10	10			Yes		Yes	
09/03/2015	10/28/2016	614 Longfellow Street NW	The Kingston	23	23	Yes		Yes			
12/02/2015	05/27/2016	1339 Fort Stevens Drive NW	Ft. Stevens Apartments	59	59	Yes		Yes	Yes		
01/29/2016	03/15/2017	6676 Georgia Avenue NW	Takoma Place/Aspen Court Apartments	105	105	Yes		Yes		Yes	
01/29/2016	03/30/2017	930 Randolph Street NW	Petworth Place/Petworth Station	88	84	Yes		Yes			

WARD 4 – TABLE OF AFFORDABLE PROJECTS (continued)

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Coop
02/24/2016	04/20/2017	301 Delafield Place NW	The Delafield	23	23	Yes		Yes		Yes	
02/24/2016	03/16/2017	310 Hamilton Street NW	The Hamilton (previously The Lucille)	17	17					Yes	
02/24/2016	04/20/2017	5810 Blair Road NW		13	13					Yes	
03/30/2016	05/18/2018	4524 Iowa Avenue NW		13	13					Yes	
07/20/2017	10/16/2018	410 Cedar Street NW	Cedar Street Apartments	30	30	Yes		Yes	Yes		
01/29/2018	10/19/2018	5616 13th Street NW	The Madison	39	39					Yes	
03/12/2018	04/02/2019	5000 New Hampshire Avenue NW	The Hampshire	56	56	Yes			Yes		
03/22/2018	06/14/2019	5521 Colorado Avenue NW	Longfellow	70	70					Yes	
03/22/2018	06/14/2019	6939 Georgia Avenue NW	Walter Reed Apartments	97	97					Yes	
05/11/2018	12/27/2018	5611 5th Street NW		35	35					Yes	
01/11/2019	12/02/2019	1320 Nicholson Street NW		25	25					Yes	
01/25/2019	01/30/2020	811 Jefferson Street NW		13	13					Yes	
09/06/2019	04/05/2021	5330 Colorado Avenue NW		22	22					Yes	
01/07/2020	02/18/2020	604 Kennedy Street NW		18	18					Yes	

Notes: Sales dates may be approximate, properties may include other addresses beyond the reference address, and the subsidy tally is for forms of subsidy added or preserved.

WARD 5 – TABLE OF AFFORDABLE PROJECTS

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
01/24/2008	06/11/2008	2100 Channing Street NE		13	13					Yes	
07/06/2009	07/27/2010	2520 10th Street NE	Dahlgreen Courts LLC	116	95	Yes					
03/09/2011	11/15/2011	643 Hamlin Street NE	Brookland Place Apartments	79	79	Yes					
10/18/2011	05/07/2012	1825 Maryland Avenue NE	1825 Maryland Ave	25	25					Yes	
01/13/2014	07/23/2015	230 Rhode Island Avenue NE	Rhode Island Gardens	87	87					Yes	
03/07/2014	08/15/2014	2100 Channing Street NE		13	13					Yes	
08/05/2014	10/21/2014	1309 Holbrook Street NE		6	6					Yes	
09/22/2015	02/25/2016	70 Webster Street NE		8	8					Yes	
09/22/2015	02/25/2016	78 Webster Street NE		8	8					Yes	
09/23/2015	08/26/2022	1520 Holbrook Street NE		16	16					Yes	
10/09/2015	06/30/2017	2900 Newton Street NE	Hedin House	48	48	Yes	Yes	Yes			
12/02/2015	11/09/2016	643 Hamlin Street NE	Brookland Place	79	79	Yes	Yes	Yes	Yes		
05/05/2016	09/21/2019	4811 North Capital Street NE	Tivoli Gardens	93	93	Yes				Yes	
03/30/2017	05/15/2018	69 Rhode Island Avenue NW		7	0		Yes				
05/22/2017	09/21/2019	1 Hawaii Avenue NE	1 Hawaii Avenue NE Apartments	34	34	Yes		Yes	Yes	Yes	
08/02/2017	01/11/2018	1825 Maryland Avenue NE		25	25					Yes	
10/25/2018	12/03/2018	1814 Irving Street NE	The Ashton	53	53					Yes	
03/13/2019	01/24/2020	2321 Lincoln Road NE	Glenwood Apartments	89	89					Yes	
08/30/2019	02/01/2022	306 Everts Street NE	Everts House	21	21					Yes	
04/01/2020	08/26/2020	93 Hawaii Avenue NE	University Apartments	8	8					Yes	
04/08/2020	10/29/2020	69 Hawaii Avenue NE		72	72					Yes	
04/08/2020	08/25/2020	98 Webster Street NE		8	8					Yes	

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WARD 6 – TABLE OF AFFORDABLE PROJECTS

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
04/07/2011	12/22/2011	900 G Street NE	Capitol Hill Towers	204	204	Yes	Yes				
03/12/2012	11/15/2013	301 G Street SW	Capitol Park Tower	288	288					Yes	
08/30/2012	10/31/2013	325 P Street SW	Channel Square Apartments	128	128	Yes		Yes			
08/30/2013	10/07/2014	1000 6th Street SW	View at Waterfront	256	256					Yes	
12/02/2016	01/25/2018	1100 1st Street SE	Onyx on First	267	267					Yes	
08/29/2018	06/03/2019	301 G Street SW	Capitol Park Tower	288	288					Yes	

Notes: Sales dates may be approximate, properties may include other addresses beyond the reference address, and the subsidy tally is for forms of subsidy added or preserved.



WARD 7 – TABLE OF AFFORDABLE PROJECTS

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
02/10/2006	07/09/2007	115 16th Street NE	Milestone Russell	12	11	Yes					
11/18/2006	08/18/2008	2701 R Street SE		18	18	Yes					
11/18/2006	08/18/2008	2702 Q Street SE		17	17	Yes					
11/18/2006	08/18/2008	2703 Q Street SE		21	21	Yes					
02/07/2007	10/13/2009	4507 B Street SE	Bass Circle Apartments	97	97	Yes					
06/01/2009	11/04/2009	4953 G Street SE		48	48					Yes	
02/24/2010	10/29/2010	2505 N Street SE	Milestone Apartments	37	35	Yes					
07/21/2010	11/09/2010	5005 Bass Place SE		31	31					Yes	
11/02/2012	09/12/2013	313 Anacostia Road SE		28	28					Yes	
08/19/2013	05/22/2014	5210 Just Street NE		8	8					Yes	
08/21/2013	12/14/2015	4341 E Street SE	Benning Heights	50	50	Yes	Yes	Yes			
12/19/2013	06/10/2015	5044 C Street SE		24	24					Yes	
04/24/2014	11/02/2015	3502 Minnesota Avenue SE		36	36					Yes	
07/07/2015	01/19/2016	5348 E Street SE		21	21					Yes	
08/14/2015	03/30/2016	3600 Ely Place SE	Anacostia Gardens	100	100	Yes		Yes		Yes	
08/20/2015	03/20/2017	450 51st Street SE	High View Apartments, WDC-1, Villages of East River, Greenway Gardens	209	202	Yes	Yes	Yes			
08/26/2015	05/08/2020	4212 East Capitol Street NE	Fort Chaplin Park	549	549	Yes	Yes				
03/01/2016	03/31/2017	910 Eastern Avenue NE	Hilltop Apartments	106	96	Yes		Yes			
08/23/2016	11/06/2017	1035 48th Street NE		12	12			Yes		Yes	
09/12/2016	11/29/2017	2530 Park Place SE	Park Place	21	21	Yes		Yes	Yes		
05/03/2017	12/05/2017	4953 G Street SE		48	48					Yes	
06/07/2017	04/22/2019	5014 H Street SE	Jamison Condominiums	26	26					Yes	
11/17/2017	11/30/2017	311 Division Avenue NE	Division Flats	22	22					Yes	
12/19/2017	02/19/2019	101 41st Street NE		14	14	Yes					

WARD 7 – TABLE OF AFFORDABLE PROJECTS (continued)

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
02/21/2018	06/21/2019	501 60th Street NE		12	12	Yes				Yes	
02/21/2018	06/20/2019	5050 A Street SE		12	12	Yes				Yes	
02/21/2018	12/17/2018	5054 Astor Place SE		13	13	Yes				Yes	
02/21/2018	06/21/2019	516 60th Street NE		9	9	Yes				Yes	
02/22/2018	06/21/2019	1106 Eastern Avenue NE		14	14	Yes			Yes	Yes	
02/22/2018	06/21/2019	1112 Eastern Avenue NE		15	15	Yes			Yes	Yes	
02/22/2018	06/21/2019	1206 Eastern Avenue NE		15	15	Yes			Yes	Yes	
02/22/2018	06/21/2019	1218 Eastern Avenue NE	The Villages at Evergreen	18	18	Yes			Yes	Yes	
02/22/2018	06/21/2019	1342 Eastern Avenue NE		15	15	Yes			Yes	Yes	
02/22/2018	06/21/2019	4321 Brooks Street NE		15	15	Yes				Yes	
02/22/2018	06/20/2019	4452 B Street SE		18	18	Yes				Yes	
02/22/2018	06/20/2019	5011 B Street SE		12	12	Yes				Yes	
02/22/2018	06/20/2019	5019 B Street SE		12	12	Yes				Yes	
02/22/2018	06/20/2019	5023 Bass Place SE		12	12	Yes				Yes	
02/22/2018	06/20/2019	5029 B Street SE		12	12	Yes				Yes	
02/22/2018	06/20/2019	5031 Bass Place SE		12	12	Yes				Yes	
02/22/2018	06/20/2019	5119 Astor Place SE		12	12	Yes				Yes	
02/22/2018	06/20/2019	5510 Nannie Helen Burroughs Avenue NE		14	14	Yes				Yes	
02/22/2018	06/21/2019	5821 Field Place NE		9	9	Yes			Yes	Yes	
02/22/2018	06/21/2019	5909 Clay Street NE		15	15	Yes			Yes	Yes	
05/30/2018	10/23/2019	1711 28th Street SE		14	14	Yes		Yes	Yes	Yes	
04/03/2019	01/30/2020	1616 27th Street SE		11	11					Yes	
06/05/2019	06/18/2019	10 49th Street SE		15	15					Yes	
01/17/2020	06/24/2021	3300 Pennsylvania Avenue SE		31	31					Yes	

Notes: Sales dates may be approximate, properties may include other addresses beyond the reference address, and the subsidy tally is for forms of subsidy added or preserved.

WARD 8 – TABLE OF AFFORDABLE PROJECTS

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
08/11/2006	09/28/2007	2919 Knox Place SE	Langston Lane Apartments	118	118	Yes	Yes				
08/03/2010	11/05/2010	1509 19th Street SE		36	36					Yes	
03/09/2012	05/21/2012	1849 Good Hope Road SE		18	18	Yes					
01/31/2013	03/18/2014	4660 Martin Luther King Jr Avenue SW	The Wingate	714	714	Yes					
06/17/2013	02/11/2015	2715 Wade Road SE	Parchester Apartments	95	94	Yes	Yes	Yes			
10/18/2013	05/20/2014	3632 Brothers Place SE	Brothers Place	30	30					Yes	
11/20/2013	06/15/2015	2300 Good Hope Road SE	Marbury Plaza	671	671					Yes	
08/28/2014	12/18/2015	2400 Pomeroy Road SE	Pomeroy Gardens	60	60	Yes					
12/13/2014	08/14/2015	4373 Barnaby Road SE	Belmont Crossing, formerly Jeffrey Gardens	275	275	Yes		Yes		Yes	
07/17/2015	10/20/2015	4011 3rd Street SE	Southern Hills	77	77	Yes	Yes				
10/13/2015	01/27/2017	800 Southern Avenue SE	Park Southern	361	361	Yes		Yes		Yes	
12/03/2015	06/15/2017	2402 Hartford Street SE	Hanover Courts	74	74	Yes		Yes			
12/09/2015	11/17/2017	4020 1st Street SE		24	24					Yes	
11/22/2016	02/15/2018	2321 Good Hope Court SE	Woodmont Crossing	176	176	Yes					
12/12/2016	10/27/2017	2276 Savannah Street SE	Terrace Manor	61	61	Yes					
12/21/2016	04/17/2018	3234 13th Street SE	Savannah Apartments	66	66	Yes		Yes			
06/21/2017	02/28/2019	1912 Savannah Street SE	Ridgecrest Village	269	269	Yes		Yes	Yes	Yes	
07/13/2017	04/02/2018	2420 15th Place SE		24	24					Yes	
08/29/2017	04/05/2018	1815 Minnesota Avenue SE		12	12					Yes	
11/07/2017	06/28/2019	303 Livingston Terrace SE	Warthington Woods, formerly Livingston Manor Apartments	395	395	Yes	Yes		Yes	Yes	
12/29/2017	03/31/2020	2244 Savannah Terrace SE	Woodberry Village	196	190	Yes	Yes				

WARD 8 – TABLE OF AFFORDABLE PROJECTS (continued)

Notice Date	Sale Date	Reference Address	Property Name	Total Units	Affordable Units	LIHTC Added or Preserved	Section 8 or Other Federal Project-Based	DC Housing Production Trust Fund	Other DC Subsidy	Rent Control Preserved	Limited Equity Co-Op
02/22/2018	11/27/2018	3812 South Capitol Street SE		48	48	Yes		Yes	Yes	Yes	
09/27/2018	03/27/2019	4690 Martin Luther King Jr Avenue SW	Oak Park Apartments	126	126					Yes	
12/11/2018	09/30/2019	2020 19th Place SE		29	29					Yes	
03/13/2019	02/06/2020	4010 9th Street SE		12	12					Yes	
03/19/2019	10/04/2021	1412 Young Street SE		18	18	Yes				Yes	
03/25/2019	10/04/2021	1721 T Street SE		19	19	Yes				Yes	
05/17/2019	09/30/2020	4314 South Capitol Street SE	Crescent Park Village	20	20	Yes				Yes	
05/30/2019	04/28/2020	1656 W Street SE		36	36					Yes	
07/22/2019	10/04/2021	2585 Naylor Road SE		15	15	Yes					
09/22/2020	05/04/2021	4305 Wheeler Road SE	Formerly known as "The Geraldine"	44	44					Yes	

Notes: Sales dates may be approximate, properties may include other addresses beyond the reference address, and the subsidy tally is for forms of subsidy added or preserved.



APPENDIX B

Additional tables on subsidies used in TOPA projects

TOPA PROPERTIES WITH HOUSING PRODUCTION TRUST FUND FINANCING ADDED OR PRESERVED																
	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	60	-	1	1	-	1	1	10	9	6	14	10	5	2	-	-
Ward 1	7	-	-	-	-	1	-	3	1	-	1	-	1	-	-	-
Ward 2	2	-	1	-	-	-	-	-	-	-	-	1	-	-	-	-
Ward 3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ward 4	29	-	-	1	-	-	1	6	4	5	6	4	2	-	-	-
Ward 5	3	-	-	-	-	-	-	-	-	-	2	-	1	-	-	-
Ward 6	1	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Ward 7	10	-	-	-	-	-	-	-	2	-	3	4	-	1	-	-
Ward 8	8	-	-	-	-	-	-	-	2	1	2	1	1	1	-	-

HPTF funds in place up to March 2023 for rental and LE Coop projects. This includes all properties where the TA registered and either assigned its rental rights or purchased as LE Coop. Year references year of TOPA Notice, so later projects may not have completed the financing process.

AFFORDABLE UNITS IN TOPA PROPERTIES WITH HPTF FINANCING ADDED OR PRESERVED																
	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	3,620	-	81	31	-	13	28	514	338	426	1,132	607	388	62	-	-
Ward 1	241	-	-	-	-	13	-	129	9	-	57	-	33	-	-	-
Ward 2	241	-	81	-	-	-	-	-	-	-	-	160	-	-	-	-
Ward 3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ward 4	1,058	-	-	31	-	-	28	257	151	151	163	225	52	-	-	-
Ward 5	161	-	-	-	-	-	-	-	-	-	127	-	34	-	-	-
Ward 6	128	-	-	-	-	-	-	128	-	-	-	-	-	-	-	-
Ward 7	580	-	-	-	-	-	-	-	59	-	350	157	-	14	-	-
Ward 8	1,211	-	-	-	-	-	-	-	119	275	435	65	269	48	-	-

HPTF funds in place up to March 2023 for rental and LE Coop projects. This includes all properties where the TA registered and either assigned its rental rights or purchased as LE Coop. Year references year of TOPA Notice, so later projects may not have completed the financing process.

TOPA PROPERTIES WITH LIHTC ADDED OR PRESERVED

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	101	7	1	2	1	4	7	8	8	4	12	10	8	23	6	-
Ward 1	11	-	-	1	-	3	1	2	1	-	1	-	1	-	1	-
Ward 2	5	1	-	-	-	-	1	-	-	-	-	1	1	-	1	-
Ward 3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ward 4	23	1	-	1	-	-	3	4	4	2	3	3	1	1	-	-
Ward 5	6	-	-	-	1	-	1	-	-	-	2	1	1	-	-	-
Ward 6	2	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-
Ward 7	34	4	1	-	-	1	-	-	1	-	3	2	1	21	-	-
Ward 8	20	1	-	-	-	-	-	1	2	2	3	3	3	1	4	-

Includes LIHTC in place as of March 2023 for rental projects. This includes all properties where the TA registered and assigned its rental rights. Year references year of TOPA Notice, so later projects may not have completed the financing process.

LIHTC AFFORDABLE UNITS IN TOPA PROPERTIES WITH LIHTC ADDED OR PRESERVED

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	7,774	366	97	202	95	119	820	482	1,072	390	1,621	867	1,117	383	143	-
Ward 1	699	-	-	171	-	84	150	112	63	-	57	-	33	-	29	-
Ward 2	641	127	-	-	-	-	160	-	-	-	-	160	152	-	42	-
Ward 3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ward 4	1,138	54	-	31	-	-	227	224	151	57	102	206	30	56	-	-
Ward 5	425	-	-	-	95	-	79	-	-	-	127	90	34	-	-	-
Ward 6	332	-	-	-	-	-	204	128	-	-	-	-	-	-	-	-
Ward 7	1,500	67	97	-	-	35	-	-	50	-	850	108	14	279	-	-
Ward 8	3,039	118	-	-	-	-	-	18	808	333	485	303	854	48	72	-

Includes LIHTC in place as of March 2023 for rental projects. This includes all properties where the TA registered and assigned its rental rights. Year references year of TOPA Notice, so later projects may not have completed the financing process.

APPENDIX C

Legislative and Legal Review of the TOPA Statute: 1980 to 2022

Over the 40-plus-year history of the DC Tenant Opportunity to Purchase Act (TOPA), real estate interests have utilized many different approaches to avoid application of TOPA to their building sales. In response, tenant advocates have challenged owners' actions in court, and tenant advocates have sought amendments to the statutory language to clarify the policy intent. Today, a specified set of transactions are clearly exempt from TOPA, and certain controversies continue over the interpretation of the statute.

This review is not comprehensive as to all statutory law and judge-made law affecting TOPA. Rather, this review addresses significant themes and developments regarding the statute. It includes the following:

- Statutory language and interpretation

- What constitutes a "sale" under TOPA
- What is a "bona fide" offer of sale
- Bargaining in good faith
- TOPA in practice
- Ongoing controversies

The TOPA Statute

The Tenant Opportunity to Purchase Act (TOPA) was enacted by the DC Council in 1980²⁵ as Title IV of the Rental Housing Conversion and Sale Act.²⁶ A key purpose²⁷ of the Conversion and Sale Act, as stated in the 1980 Committee Report, is to "[prevent] displacement by giving the tenants an opportunity to purchase their homes." This policy of preventing displacement was, and remains, plainly stated in the "purpose" passages of the Conversion and Sale Act, as currently in effect, D.C. Code § 42-3401.02.²⁸

The central operative provision of TOPA was, and remains,²⁹ as follows:

"Before an owner of a housing accommodation³⁰ may sell the housing accommodation or issue a notice to vacate for purposes of demolition or discontinuance of housing use, the owner shall give the tenant an opportunity to purchase the housing accommodation at a price and terms that represent a bona fide offer of sale." D.C. Code § 42-3404.02(a)

Since its enactment over forty years ago, opponents of TOPA have deployed creative transaction structures seeking to avoid the statutory requirement to provide a bona fide offer of sale to tenants.³¹ Supporters of TOPA have responded by urging the D.C. Council to close the resulting coverage gaps, and by challenging suspect transactions in court.

²⁵ The Conversion and Sale Act succeeded a similar provision in Section 602(b) of the Rental Housing Act of 1977. See Comments on Proposed Bill, March 11, 1980, included as an attachment to the 1980 Committee Report.

²⁶ The Conversion and Sale Act has five titles: Title I, Purposes and Definition; Title II, Condo & Cooperative Conversions; Title III, Relocation; Title IV, TOPA; Title IV-A, DOPA (see within); and Title V, Enforcement and Interpretation. This review focuses primarily on Title IV, TOPA, with some discussion of DOPA.

²⁷ As currently in effect, D.C. Code § 3401.02 states the purposes of the Conversion and Sale Act as follows:

"(1) To discourage the displacement of tenants through conversion or sale of rental property, and to strengthen the bargaining position of tenants toward that end without unduly interfering with the rights of property owners to the due process of law;

"(2) To preserve rental housing which can be afforded by lower income tenants in the District;

"(3) To prevent lower income elderly tenants and tenants with disabilities from being involuntarily displaced when their rental housing is converted;

"(4) To provide incentives to owners, who convert their rental housing, to enable lower income non-elderly tenants and tenants without disabilities to continue living in their current units at costs they can afford;

"(5) To provide relocation housing assistance for lower income tenants who are displaced by conversions;

"(6) To encourage the formation of tenant organizations;

"(6a) To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement; and

"(7) To authorize necessary actions consistent with the findings and purposes of [the Act]."

²⁸ This review uses the current codification of the DC Code and refers to the original section numbers and/or prior codifications only where needed for clarity or distinction.

In the case of the cited section, comparison of the current version (in the DC Code) with the original version (in the 1980 enrolled bill) reveals only the addition of subsection (6a) (see footnote 3 above), which was added by the 1994 Amendments (see within).

²⁹ The only meaningful changes over time to the quoted passage have concerned the placement/removal of commas. These changes were adopted by the D.C. Council following public commentary regarding legal arguments by TOPA opponents seeking to limit the breadth and scope of the requirement to provide the tenants an offer of sale. See A. Wiener, "Opportunity Cost," Washington City Paper, Feb. 13, 2015, <https://washingtoncitypaper.com/article/200936/opportunity-cost-how-a-new-loop-hole-could-give-landlords-a/>, last accessed Feb. 20, 2023; see also *Richman Towers Tenants' Association v. Richman Towers LLC*, 17 A.3d 590, 593 (D.C. 2011) (holding among other things that, even without the comma amendments, the offer-of-sale requirement of TOPA "applies to all sales and does not restrict the requirement of notice to tenants to situations where the sale is only for the purpose of demolition or discontinuance of housing use"); *Redmond v. Birkel*, 797 F.Supp. 36 (D.D.C. 1992). The comma changes appeared in the Bona Fide Offer (*Museum Square*) amendments (see within), albeit without comment or explanation. See "Comparative of Committee Print B21-0147, Committee on Housing and Community Development, October 21, 2015," at p.2.

³⁰ In this review, the focus is on multifamily properties, with 5 or more units; these 5+-unit properties are most commonly addressed by the courts and by the press. TOPA applies to single-family accommodations only in limited circumstances, principally involving low-income elderly tenants. See D.C. Code § 42-3404.09, as modified in 2018 at the urging of TOPA opponents. TOPA applies also to 2-unit through 4-unit accommodations (D.C. Code § 42-3404.10), with shorter deadlines and other procedural and substantive differences from the provisions that apply to 5+-unit properties (D.C. Code § 42-3404.11).

³¹ Opponents also have challenged the constitutionality of the Rental Housing Conversion and Sale Act, including TOPA. Federal and District appellate courts have held that the Act is not an unconstitutional delegation of authority, and also that the Act is not an unconstitutional taking of private property for public use without just compensation. See generally *Silverman v. Barry*, 845 F.2d 1072, 1086 (D.C. Cir. 1988); *Hornstein v. Barry*, 560 A.2d 530 (D.C. 1989). See also R. Eisen, "The Rental Housing Conversion And Sale Act: A Practitioner's Roadmap To Tenant Ownership," 2 U.D.C. L. Rev. 91 (1993), at p.111; F.G. Jean, "Constitutionality of the Rental Housing Conversion and Sale Act," 33 Howard L.J. 401 (1991).

Rules of Statutory Construction – Favoring Tenants’ Rights

The Rental Housing Conversion and Sale Act, which includes TOPA, provides as follows in DC Code § 42-3405.11:

“The purposes of [the Act] favor resolution of ambiguity by the hearing officer or a court toward the end of strengthening the legal rights of tenants or tenant organizations to the maximum extent permissible under law. If [the Act] conflicts with another provision of law of general applicability, the provisions of [the Act] control.”

As it passed the Conversion and Sale Act in 1980, the D.C. Council found it necessary to include such a provision because courts had narrowly construed the predecessor provisions in § 602(b) and other provisions of the Rental Housing Act of 1977.³² This admonition has sometimes, at least, been the driving factor behind tenants’ successes in court challenges to owners’ evasion efforts.

“Sale” or “Sell”

From the beginning, a key legal/factual question has been whether a transaction is a “sale” for the purpose of TOPA.

The term “sale” or “sell” was not defined expressly in the Conversion and Sale Act as enacted in 1980. This vacuum created an opening for TOPA opponents. For example, as noted by the D.C. Council in its 1989 committee report, the owners of West End Apartments had “master leased” the property to The George Washington University. The residents brought the master lease to the attention of Council staff. The residents, and the Council, believed that the master lease “[was] a sale within the intent and purpose of [TOPA].” 1989 Committee Report at p.4.³³ Hence, the 1989 Clarification Amendment Act (D.C. Law 8-48, 36 DCR 5790, Oct. 19, 1989) added to TOPA a new subsection which, today, as D.C. Code §

42-3402.02(b), reads as follows:

“(b) For the purposes of [TOPA and DOPA],³⁴ the terms “sell” or “sale” include, but are not limited to, the execution of any agreement pursuant to which the owner of the housing accommodation agrees to some, but not all,³⁵ of the following:

“(1) Relinquishes possession of the property;

“(2) Extends an option to purchase the property for a sum certain at the end of the assignment, lease, or encumbrance and provides that a portion of the payments received pursuant to the agreement is to be applied to the purchase price;

“(3) Assigns all rights and interests in all contracts that relate to the property;

“(4) Requires that the costs of all taxes and other government charges assessed and levied against the property during the term of the agreement are to be paid by the lessee either directly or through a surcharge paid to the owner;

“(5) Extends an option to purchase an ownership interest in the property, which may be exercised at any time after execution of the agreement but shall be exercised before the expiration of the agreement; and

“(6) Requires the assignee or lessee to maintain personal injury and property damage liability insurance on the property that names the owner as the additional insured.”

As noted in testimony included in the 1989 Committee Print,³⁶ transfers of interests in the owner—corporate shares, partnership interests and the like—could constitute a

sale, in effect, even though there had been no deed of conveyance or other transfer of legal and/or equitable title. And, almost from the outset, transfers of ownership interests were used to transfer control, tantamount (in many cases) to ownership—a sale, in effect—without complying with the TOPA requirement to provide a bona fide offer of sale to the tenants.³⁷

In 1994, responding to entreaties from tenant advocates, the D.C. Council added subsection (c) to the central provision of TOPA. As then adopted, the new provision defined “sale” to include the transfer, to a single transferee, of **100%** of the ownership interests in an entity that owns a rental housing accommodation:

“(c) For the purposes of [TOPA], the term “sell” or “sale” includes the transfer of one hundred percent of all partnership interests in a partnership which owns, the accommodation as its sole asset to one transferee or of one hundred percent of all stock of a corporation which owns the accommodation as its sole asset to one transferee in one or more transactions occurring during a period of one year from the date of the first such transfer,” [Law 10-144, § 2(i), Enrolled Original at p.3]

This text, as well as other ambiguities in TOPA, provided a sort of safe harbor for TOPA opponents over the ensuing decade-plus.

- In Wallasey Tenants’ Ass’n v. Varner, 892 A.2d 1135, 1141 (D.C. 2006), the D.C. Court of Appeals applied common law principles to TOPA’s right of first refusal, and held that an intra-family transfer, that had no indicia, on the surface, of a traditional sale, did not trigger any TOPA rights.

³² R. Eisen, “The Rental Housing Conversion And Sale Act: A Practitioner’s Roadmap To Tenant Ownership,” 2 U.D.C. L. Rev. 91 (1993), at pp. 109-110.

³³ The D.C. Court of Appeals, in West End Tenants Association v. George Washington University, 640 A.2d 718 (D.C. 1994), agreed that the master lease was a “sale” but refused to apply the 1989 statutory amendments retroactively to the master lease at issue in the case which was governed by pre-1989 law.

³⁴ The District Opportunity to Purchase Act, or DOPA, D.C. Code §§ 42-3404.31 et seq., was added to the Conversion and Sale Act in 2008. See within for more information on DOPA.

³⁵ The 1989 legislation did not include the “some, but not all” language and therefore arguably required the presence of **each** listed factor for a transaction to be considered a “sale” for TOPA purposes. In Columbia Plaza Tenants’ Association v. Columbia Plaza L.P., 869 A.2d 329 (D.C. 2005), the D.C. Court of Appeals held that the master lease before it did not constitute a “sale” under TOPA because it did not include all listed features. The “some, but not all” language was inserted into subsection (b) in the 2005 TOPA Amendment Act (discussed within)

³⁶ 1989 Committee Print, Testimony of Richard C. Eisen, at pp.4-5.

³⁷ The 1983 Amendment and Extension Act, as introduced, included a provision that transfers of ownership interests constituting a majority be defined as a sale under TOPA. However, in light of opposition from Mayor Marion Barry, among others, that provision was deleted from the final bill. See 1994 Committee Report on B10-243, Section by Section Analysis, at pp.4-5. See also A. Wiener, “The Benefit of Hindsight,” Washington City Paper, Feb. 12, 2015, <https://washingtoncitypaper.com/article/372010/the-benefit-of-hindsight/>, last accessed Feb. 20, 2023. See also R. Eisen, “The Rental Housing Conversion And Sale Act: A Practitioner’s Roadmap To Tenant Ownership,” 2 U.D.C. L. Rev. 91 (1993), at p.106.

In 1989, the D.C. Council did not adopt the control-based definition of “sale” proposed by Mr. Eisen.

- In Twin Towers Plaza Tenants' Ass'n v. Capitol Park Assocs., L.L.C., 894 A.2d 1113 (D.C. 2006), the D.C. Court of Appeals held that a sale of a 95% tenancy-in-common interest was not a "sale" under TOPA, based on a strict, "plain meaning" interpretation of the definition of sale that governed the case. See also Gomez v. Independence Management of Delaware, Inc., 967 A.2d 1276 (2009), which held that a 99% stock transfer was not a "sale" under TOPA subsection (c) as it existed at that time.³⁸
- In Columbia Plaza Tenants' Association v. Columbia Plaza L.P., 869 A.2d 329 (D.C. 2005), the D.C. Court of Appeals held that the master lease before it did not constitute a "sale" under TOPA because it did not include **each** of the six features listed in DC Code § 42-3404.02(b) as then in effect.
- It became routine for transaction participants to seek and obtain, from DC government regulators, "**comfort or exemption letters**" – advance written rulings stating the conclusion that a proposed transaction was not a "sale" under TOPA. Many of these letters involved so-called "95/5 transactions" (see, e.g., Twin Towers Plaza, cited above) whereby 95% of a property, or 95% of the ownership interests in the property's owner, were transferred, following which, presumably at least a year later, the balance of the property or interests were expected to be transferred. See 2005 Committee Report, pp.5-7. These cases, and others,³⁹ prompted the D.C. Council to adopt the 2005 TOPA Amendments.

The scope of the 2005 TOPA Amendments was broad, and deep. The principal changes were to rewrite D.C. Code § 42-3402.02(c) and, in so doing, divide subsection (c) into two paragraphs. As in effect today, Paragraph (1) clarifies and sets forth examples of **what does** constitute a "sale"; and paragraph (2) states that certain described transactions **do not** constitute "sales" under TOPA (often referred to as "exemptions").

Elements of a "Sale"

The current text of paragraph (c)(1) is as follows in pertinent part:

"(c)(1) For the purposes of [TOPA and DOPA], the term "sell" or "sale" shall include:

"(A) A master lease which meets some, but not all,⁴⁰ of the factors described in subsection (b) of this section or which is similar in effect; and

"(B) (i) The transfer of an ownership interest in a corporation, partnership, limited liability company, association, trust, or other entity which owns an accommodation as its sole or principal asset, which, in effect,⁴¹ results in the transfer of the accommodation pursuant to subsection (a) of this section.

"(ii) For the purposes of subparagraph (i) of this subparagraph, the term "principal asset" means the value of the accommodation relative to the entity's other holdings."

Paragraph (c)(2) is discussed below in the context of Exemptions and Notices of Transfer.

Regarding "comfort or exemption letters",⁴² the 2005 TOPA Amendments added a new subsection to the enforcement provisions of

the Conversion and Sale Act:

"A declaratory order issued pursuant to § 42-3405.03 [civil causes of action] or § 42-3405.03a [administrative hearings] shall be the sole means by which the Mayor shall issue an official, binding determination pursuant to the request of an aggrieved owner, tenant, or tenant organization to determine rights under [TOPA and DOPA]. Reliance upon any other form of determination shall not be afforded any weight." D.C. Code § 42-3405.03a(c).

Exemptions – **Not** a "Sale"

The 2005 TOPA Amendments to TOPA rearranged, and expanded, the list of express exemptions to TOPA; i.e., transactions expressly stated to be not included within the meaning of "sell" or "sale". These statutory exemptions, as mentioned above, are now collected in D.C. Code § 42-3404.02(c)(2) (paragraph (2) of subsection (c)). Following is a partial list of express exemptions that have been somewhat controversial, or, at least, in the news:

(C) Deeds of trust and mortgages – and transfers resulting from foreclosures of such liens – subject to manipulation – see, e.g., the Sanford/Congress Heights matter discussed below

See also (D) exemptions for tax sales, and for transfers pursuant to tax foreclosure

See also (N) exemption for transfer by eminent domain or under threat of eminent domain

(E) A bankruptcy sale – subject to abuse – see, again, Sanford/Congress Heights (below)

(G)&(I) Change in form of entity, so long as no consideration is exchanged

³⁸ The Gomez court held, however, that the transfer in question "may have been a sale under subsection (a)" citing the specific facts of the case. 967 A.2d at 1283. The procedural posture of the case did not permit the court to rule definitively on this point. *Id.*

³⁹ See D. Wilgoren & S. Fleishman, "DC Loophole Foils Purchase Bids by Tenants," Washington Post, June 22, 2003, <https://www.washingtonpost.com/archive/local/2003/06/22/dc-loophole-foils-purchase-bids-by-tenants/948a688e-1ee6-4e24-a365-c4f4f000b298/>, last accessed August 1, 2023

⁴⁰ See footnote 11 above, and antecedent text, regarding this "some, but not all" phrase in relationship to the six factors listed in subsection (b).

⁴¹ In the 2005 Committee Report, the D.C. Council's Housing Committee repeatedly referred to transfers of "a controlling economic interest"—see footnote 13 above—but the phrase "in effect" was used in the text of the statutory amendment, as enacted.

See also Waterside Towers Resident Association v. Trilon Plaza Company, 2 A.3d 1084, 1085-86 (D.C. 2010) (transfers of interests in a trust; both challenged transactions would have been considered TOPA "sales" if they had been governed by 2005 TOPA Amendments).

⁴² See also the extremely critical comments on "comfort letters" contained in the March 1, 2005 Report of the Council's Committee on Consumer and Regulatory Affairs, quoted at length in the Richman Towers case (discussed below).

See also exemptions for trusts, decedents' estates estate planning, and intra-family transfers: Exemptions (A), (B), (J), (K) & (L)

Prior to the enactment and effectiveness of the 2005 TOPA Amendments, these exemptions featured prominently in efforts to evade TOPA. It is unclear whether the 2005 TOPA Amendments eliminated such schemes entirely.

(H) Transfers of interests to secure LHTC investments

See also Exemptions (O), (P) and (Q) which exempt transactions that relate to recapitalizing such properties – for example, admitting replacement investors – these exemptions were adopted in December 2020⁴³ and are only now being tested in administrative tribunals and courts

(M) Transfer pursuant to court order or court-approved settlement⁴⁴

In response to complaints that putatively non-sale transactions were being structured and closed without any notice to tenants, even where there might be a reasonable argument that the transactions should be treated as sales under TOPA, the Council also adopted, as part of the 2005 TOPA Amendments, a new subsection (d) to require that an owner send a “**Notice of Transfer**” to each tenant at least 90 days prior to closing of any transaction as to which the owner believes it is **not** required to provide an offer of sale under TOPA.⁴⁵ This subsection (d) provides deadlines and procedures to be followed by owners and tenants in connection with Notices of Transfer; required forms for such Notices of Transfer are provided online by DHCD.⁴⁶

In a Notice of Transfer, an owner also can claim exemption from TOPA without specifying a

statutory exemption; in that case, the owner must explain how the transaction is not a “sale” even though it does not fit within the four corners of a statutory exemption.

Bona Fide Offer of Sale

In some cases, owners have given tenants what purports to be a TOPA-compliant Offer of Sale, but is really not a “bona fide” offer of sale as required in TOPA § 42-3404.02(a). An example is the Museum Square case, Parcel One Phase One Associates L.L.P. v. Museum Square Tenants Association, 146 A.3d 394 (D.C. 2016), where the owner offered the property to the tenants for \$250 million based on the property's anticipated future value, as a redeveloped, market-rate luxury property, even though its present value was closer to \$36 million, the value of the property on the D.C. tax rolls.⁴⁷

In response, the D.C. Council adopted the 2015 Bona Fide Offer Amendments, adding subsections (a-1) and (a-2) to TOPA § 42-3404.02. The effect is to require independent appraisal(s), based only on then-available matter-of-right development opportunities, where an owner offers the housing accommodation to the tenants without a third-party contract; otherwise the offer does not qualify as “bona fide” under TOPA. As emphasized in the 2015 Committee Report, these amendments are “limited to situations where the **market** cannot establish the bona fide value of the building, *i.e.*, where a housing is being demolished or discontinued as a housing accommodation” [2015 Committee Report, p.7 (emphasis in original)] and, further, the Council limited the amendments to “the very limited circumstance where there is no third-party offer” [2015 Committee Report, p.7]

The Housing Committee considered applying the appraisal requirement to sale offers where

rental housing use would continue, both with, and without, third-party contracts, and acknowledged stakeholders' allegations

“that transactions were taking place where some housing providers were inflating offers of sales, with or without a third party contract, to make it more difficult for tenants to match the offer. The stakeholders alleged that the owner would then make up the difference between the bona fide market value and the actual sales price through some special arrangement conducted via a non-arm's length transaction.” [2015 Committee Report, at p.6]

“It is conceivable, of course, ... that an owner could conspire with a third party to set a price in excess of the property's fair market value, and couple it with seller-financing requirements likely impossible for the tenants to match, as ways of assuring that the third party could almost certainly escape a tenant effort to assert TOPA rights.” [2015 Committee Report, at pp.6-7, quoting William J. Davis, Inc. v. Tuxedo LLC, 2015 D.C. App. LEXIS 454 (D.C. Sept. 24, 2015)]

Nevertheless, the Committee declined to broaden the amendments as suggested by tenant advocates:

“Pending further investigation and the collection of more possible examples of such bad faith non-arm's length transactions, the Committee could in the future consider legislation that attempted to curb such alleged abuses of tenants' TOPA rights.” [2015 Committee Report, at p.6]

CNHED members are aware of abuses along the lines forecast in 2015. See, e.g., Foster

⁴³ D.C. Law 23-155, “Low Income Housing Tax Credit TOPA Exemption for Transfers of Interest Amendment Act of 2020”.67 DCR 13249, December 23, 2020.

⁴⁴ See also Juul v. Rawlings, 153 A.3d 749 (D.C. 2017).

⁴⁵ Subsection (d) also identifies exempt transactions for which a Notice of Transfer is **not** required to be sent to the tenants – but a notice must be sent to the Mayor in these cases, with the exception that not even the Mayor must be notified when a mortgage or deed of trust (Exemption (C)) is signed and recorded – or when it is foreclosed.

⁴⁶ DHCD also promulgates required forms to be used for Offers of Sale. The forms are provided/required in both English and (in appropriate cases) Spanish. See <https://dhcd.dc.gov/page/rental-conversion-and-sale-forms> (last accessed July 10, 2023).

⁴⁷ The D.C. Court of Appeals, applying 2014 law (*i.e.*, without benefit of the 2015 Bona Fide Offer Amendments), held that such an offer was, indeed, not “bona fide” under TOPA § 42-3404.02(a), because the offer price was based on future value, as redeveloped, rather than “as-is” fair market value at the time of the offer. “No reasonable third party purchaser ... would have been willing in 2014 to pay the [projected] 2019-2021 value of the property” 146 A.3d at 405. The court discussed, at length, the Phillips case, 1618 Twenty-First St. Tenants' Ass'n v. Phillips Collection, 829 A.2d 201 (D.C.2003), where “unique circumstances” justified a higher-than-market offer for the property in question. In the end, the Museum Square court seemingly concluded that Phillips did not really apply, except that it pointed to the question whether the offering owner had “an objective good faith basis” to offer the property to the tenants at close to 10 times its market value. 146 A.3d at 404.

House Tenants Association v. New Bethel Baptist Church Housing Corporation, Case No. 2022 CA 000268 R(RP) (D.C. Superior Court, filed Jan. 19, 2022), where a tenant organization is challenging an owner's putative offer of sale at a price which the tenant organization says is so high as to cause the offer to be not bona fide as required by TOPA.⁴⁸

Bargaining in Good Faith; Equalizing Bargaining Power; Tenant Assignment

Just as a TOPA offer of sale must be bona fide,⁴⁹ TOPA also requires the owner to bargain in good faith, which means, among other things, that the price, and material terms, at which the owner offers the property to the tenants, and upon which the parties contract, must be "at least as favorable as that offered to a third party" D.C. Code § 42-3404.05(a). If the tenants and the owner cannot agree on a contract, and if the owner thereafter contracts with a third party at a price more than 10 percent below the price offered to the tenants, the owner must start the TOPA process over again. D.C. Code § 42-3404.05(a-1). And the owner may not require the tenants to prove financial ability to close unless the tenants (in their discretion) accept purchase money financing provided by the owner. D.C. Code § 42-3404.05(a-2).

As mentioned, TOPA allows an owner to offer its property for sale to the tenants without a third-party contract. See D.C. Code § 3404.03(3).⁵⁰ Sometimes the owner and the tenants have a good relationship, the owner's offer is bona fide, and the tenants are treated

with respect in the negotiations, which result in benefits for the tenants, whether or not they enter into a transaction with the owner. An example is the Faircliff Plaza, where the owner issued a TOPA offer without a third-party contract, received a favorable response from the tenant organization, and then obtained D.C. government financing for expanding the number of affordable units. See "DHCD Financing to Produce 340 Affordable Rental Units in Wards 1, 7 and 8," March 21, 2023 (Press Release), <https://dhcd.dc.gov/release/dhcd-financing-produce-340-affordable-rental-units-wards-1-7-and-8> (last accessed July 10, 2023). Sometimes, as in the Museum Square case, discussed above, an offer without a third-party contract is not bona fide and seems designed to force the tenants into inaction.

In order to equalize (somewhat) the relative bargaining power of the tenants, the statute requires minimum periods to negotiate a contract, and thereafter to secure financing and close the transaction. DC Code § 42-3404.10 (2-family to 4-family accommodations), § 42-3404.11 (multifamily).⁵¹ The owner may not require an earnest-money deposit greater than 5 percent of the purchase price, § 42-3404.05(b),⁵² and the deposit must be refunded in full if the tenant organization⁵³ is not able to close, *id.* See also § 42-3404.03 which prescribes certain information, including the asking price and material terms, which must be included in a TOPA Offer of Sale, and the owner's duty to provide specified additional data upon

request, failing which, the negotiation period, as well as the subsequent closing periods, are extended, day-for-day, until all required data has been provided. D.C. Code § 42-3404.11(2). Finally, the law provides that a tenant cannot waive the right to receive an Offer of Sale. D.C. Code § 42-3404.07.

The tenant organization is entitled to assign its TOPA rights to anyone, including a rival of the owner's buyer, in exchange for whatever consideration the tenant organization deems acceptable, D.C. Code § 42-3404.06. See "In Practice" below for more information about this right.

Right of First Refusal

TOPA is sometimes referred to as a right of first refusal. That is not really true. Rather, TOPA establishes tenants' right to receive a bona fide offer of sale, and a duty of the parties to bargain in good faith. In other words, TOPA is really a right of first purchase. But TOPA does also contain a true right of first refusal (ROFR), separate and distinct⁵⁴ from the right of first purchase. This ROFR arises if the owner and the tenants, bargaining in good faith in accordance with TOPA, cannot come to an agreement. In that event, the tenants have the right to match a third-party contract, term for term,⁵⁵ as provided in D.C. Code § 42-3404.08.

Cooperatives

TOPA expressly encourages tenants to form cooperatives to acquire their properties using their TOPA rights; see § 42-3404.11(3) (B). In practice, tenants generally form

⁴⁸ The 2022 Foster House case is related to, but distinct from, the 2019 Foster House case discussed elsewhere in this review. The putative offer of sale, at issue in the 2022 case, was made in a so-far unsuccessful effort to moot the tenant organization's 2019 lawsuit which asserted that the "Ground Lease and Development Agreement" at issue in the 2019 lawsuit was a disguised sale under TOPA.

⁴⁹ See also Wilson Courts Tenants v. 523-525 Mellon St., 924 A.2d 289 (D.C. 2007) where the D.C. Court of Appeals held that a buyer may not be considered a bona fide purchaser for value where the buyer was aware that the seller violated tenants' TOPA rights during the sale process.

⁵⁰ See also the current TOPA offer form promulgated by DHCD, <https://dhcd.dc.gov/node/1555566>, where there is included a provision for the owner to indicate whether there is, or is not, a third-party contract.

⁵¹ Tenant organizations should not miss these deadlines, and any agreed extensions should be documented properly. See, e.g., William J. Davis, Inc. v. Tuxedo LLC, No. 14-CV-59 (D.C. Sep. 23, 2015), where the court held that the tenant organization and its counsel had not properly extended the negotiation deadline, which the court held was "fatal" to the tenants' exercise of their rights.

⁵² Regarding the timing of posting deposits, tenant organizations must be careful when evaluating, and responding to, TOPA offers. In Van Leeuwen v. Blodnikar, 144 A.3d 565 (D.C. 2016), tenants had to go to the D.C. Court of Appeals for a ruling that they had validly accepted a TOPA offer, albeit without (yet) posting the deposit, under the specific text of the offer, and the acceptance.

⁵³ For a property with 5 or more units, only a tenant organization, not individual tenants, nor a group of tenants not constituting a tenant organization, may exercise TOPA rights. D.C. Code § 42-3404.11(1). A TOPA-compliant tenant organization must be comprised of at least a majority of occupied households. *Id.* And, once registered, only a tenant organization may bring suit for a violation of TOPA involving a 5-plus-unit property. See also Stanton v. Gerstenfeld, 582 A.2d 242, 245 (D.C. 1990).

⁵⁴ See 1836 S Street Tenants Ass'n v. Estate of Battle, 965 A.2d 832, 840 (2009), citing Green v. Gibson, 613 A.2d 361, 362 (D.C. 1992) ("[A] residential tenant has two distinct sets of rights when an owner decides to sell"). The Estate of Battle opinion also directed the reader to a potentially conflicting statement in Wallasey Tenants Ass'n, Inc. v. Varner, 892 A.2d 1135, 1138 (D.C. 2006) (suggesting in dicta that the two rights are equivalent).

⁵⁵ The owner nevertheless must accept certain overriding contractual provisions, as outlined in this review under the category "Bargaining in Good Faith".

limited-equity cooperatives with assistance from tenant advocacy organizations⁵⁶ and with subsidized financing. TOPA provides expanded deadlines for cooperative purchasers to organize, contract, secure financing and close a transaction. See D.C. Code § 42-3404.11(3)(B) (providing nonprofit housing cooperatives 180 days to settle, rather than the 120 days otherwise provided). The D.C. government provides non-TOPA incentives, as well: Among other incentives, low-income cooperatives qualify for a five-year exemption from property taxes and an exemption from transfer and recordation taxes. D.C. Code § 47-3503.

District Opportunity to Purchase Act (DOPA)

In 2008, the D.C. Council added Subchapter IV-A to the Conversion and Sale Act; this subchapter is generally known as the District Opportunity to Purchase Act, or DOPA, D.C. Code §§ 42-3404.31 et seq. DOPA applies only to accommodations of 5 units or more, and generally tracks—and is subordinate to—tenants' rights under TOPA. A key provision is that an owner's TOPA notice given to the Mayor (DHCD) also expressly must incorporate an offer to the District under DOPA. Under regulations adopted in 2018 (14 DCMR Ch. 24, 65 DCR 012627, Nov. 16, 2018), and under amendments to the statute adopted in 2021 (D.C. Law 24-24, 68 DCR 006932, Aug. 28, 2021), the District is required to preserve, and in some cases create, affordable housing if and as it exercises its DOPA purchase rights. Under the regulations and the 2018 statutory amendments, the mechanism for the District to exercise its rights is to engage pre-screened developers which, under an assignment from the District, will acquire the properties and develop them as affordable housing. For more information, see <https://dhcd.dc.gov/service/district-opportunity-purchase-act-dopa> (last accessed July 10, 2023).

In Practice – Role of Title Insurance Companies

Title insurance companies indemnify against invalidity of real property interests. Sale of residential rental property, without compliance with TOPA where required, is void, or at least voidable.⁵⁷ Thus, title companies typically take exception to the effect of TOPA unless they become satisfied that the transaction participants have complied with TOPA, or are not required to comply. In order to obtain such satisfaction, title companies have developed detailed requirements. Typical checklist items include review of TOPA Offers of Sale and/or Notices of Transfer; review of tenant organizations' organizational documents, membership lists, meeting minutes, and resolutions of members and directors; and review of correspondence between/among buyer, seller, tenant organizations and the District of Columbia government. If a title company determines that all is in order – and if, crucially, the title company receives from the Conversion and Sale Division (CASD) of the DC Department of Housing and Community Development (DHCD) a "review of file" letter that reports all expected/required actions and documents – the title company typically will be willing to insure the result⁵⁸ that the transaction cannot be voided due to TOPA.

In Practice – Assignment of TOPA Rights

Tenant organizations, particularly when comprised primarily of low-income tenants, may need a development partner when seeking to exercise their TOPA rights. A tenant organization is entitled to assign its TOPA rights to anyone, in exchange for whatever consideration the tenant organization deems acceptable:

"The tenant may exercise rights under this subchapter in conjunction with a third party or by assigning or selling

those rights to any party, whether private or governmental. The exercise, assignment, or sale of tenant rights may be for any consideration which the tenant, in the tenant's sole discretion, finds acceptable. Such an exercise, assignment, or sale may occur at any time in the process provided in this subchapter and may be structured in any way the tenant, in the tenant's sole discretion, finds acceptable."

D.C. Code § 3404.06.⁵⁹ Hence, where an owner and buyer are acting in good faith, something of a bidding war can ensue: The tenant organization can have a choice of potential assignees, including a rival of the owner's chosen buyer, and also including the owner's buyer itself. The tenant organization's choice of assignee typically turns on the best deal offered to the tenant organization by the potential assignee. Typical concessions include rent protections for current tenants, property improvements, and the like.⁶⁰ In some cases, particularly where acquisition and redevelopment financing includes Low-Income Housing Tax Credits (LIHTC), a buyer may include the tenant organization as a member of the ownership entity, in order to better qualify under the District's Qualified Allocation Plan for LIHTCs.

In Practice – Voluntary Agreements

Landlords and tenants sometimes have documented their agreed resolution of a TOPA case using a hybrid version of a so-called 70% Voluntary Agreement. Likewise, tenant organizations and their developer partners sometimes have included, in their Development Agreements, elements of 70% Voluntary Agreements. A Voluntary Agreement is a feature of "Rent Control" under the rent stabilization provisions of the D.C. Rental Housing Act, DC Code §§ 3501.01 et seq.⁶¹

⁵⁶ See, e.g., A. Williams, "Columbia Heights Renters Begin Forming A Co-Op To Keep Their Building Affordable," Feb. 17, 2022, DCist, <https://dcist.com/story/22/02/17/buena-vista-apartments-cooperative-topa/> (last accessed July 10, 2023). See also J. Meima, "Lessons from 20 years of Enabling Tenants to Buy Their Buildings," Nov. 23, 2020, Shelterforce, <https://shelterforce.org/2020/11/23/the-keys-to-the-tenant-opportunity-to-purchase/> (last accessed July 10, 2023).

⁵⁷ See *Fourth Growth v. Wright*, 183 A.3d 1284 (D.C. 2018), where the D.C. Court of Appeals said noncompliance is voidable, and permitted buyer and seller to cure their inadvertent noncompliance by providing the required TOPA offer of sale shortly after they had closed on the sale.

⁵⁸ Title policies typically indemnify against both damages and defense costs (i.e., attorneys' fees). However, in the case of TOPA coverage, title companies, since approximately 1995, have tended to insure only the result, and have expressly excluded coverage of defense costs.

⁵⁹ This section was amended in or about 1995 to read as quoted. As enacted in 1980 [see enrolled bill], the section read as follows:

"Sec. 406. *Assignment and Tenant Partners. The tenant may exercise rights under [TOPA] in conjunction with a third party. The tenant may assign his or her rights under [TOPA] to an agency or instrumentality of the District or federal governments.*"

The 1980 text was replaced in 1994 because the prior text "[had] been the subject of more litigation than virtually all other issues under the Act combined." [1994 Committee Report, at p.10]

⁶⁰ See generally A. Riquier, "For years, \$13 million and dozens of hands: How 'affordable housing' gets made in America," MarketWatch, June 29, 2019, <https://www.marketwatch.com/story/four-years-13-million-and-dozens-of-hands-how-affordable-housing-gets-made-in-america-2019-05-22>, last accessed Feb. 20, 2023.

⁶¹ This review addresses TOPA primarily. Rent Control generally is beyond the scope of this review, except to note the intersection with Voluntary Agreements as noted.

Under Rent Control, Voluntary Agreements give landlords the ability to recoup, from rent increased temporarily or permanently, the cost of needed property improvements. D.C. Code § 3502.15.⁶² In TOPA deals, modified versions of Voluntary Agreements are deployed to lock-in both a rent freeze (or de-escalation) for current tenants, and, somewhat controversially, increased rents for future tenants, as well as to agree upon property improvements necessary to secure the tenant organization's approval.

Typically, it is future tenants—and affordable housing generally—that are negatively affected by these agreements, under which landlords are afforded carte blanche to impose upon future tenants much higher rent levels, and more restrictive terms and conditions, because tenants' rent protections under Voluntary Agreements usually apply only to the tenants who are in residence at the time the agreement is signed.⁶³ This, of course, creates “a powerful incentive to displace current residents, especially longer-term tenants whose rents are much lower than market rate” K. Richardson, “My building used a rent control loophole. Here's what happened,” Greater Greater Washington, Feb 20, 2020, <https://ggwash.org/view/76237/dc-rent-control-laws-topa-housing-harvard-hall>, last accessed Feb. 20, 2023.

Ongoing Controversies

Ongoing TOPA controversies that may merit further legislative attention:

- **Over-Arching Schemes.** Many of the tactics and lawsuits mentioned in this review have, at their core, efforts by owners to evade the requirements of TOPA by means of an “over-arching agreement”⁶⁴ or, put differently, a series of stepped transactions which, separately, may not violate TOPA, but which, together, effect a “sale” of the property in violation of TOPA. Litigation over such transactions has been very fact-specific, has turned

at times on the quality of lawyering, and has been affected by TOPA amendments seeking to reverse some rulings.

An example is Alcazar Tenants' Ass'n v. Smith Property Holdings, L.P., 981 A.2d 1202, 1204 (2009), where the owner and its collaborators underwent a “multi-step property transfer ... A number of different entities were involved ... with multiple transfers and exchanges among them.” The owner created a trust, with a new entity, controlled by the owner, as beneficiary, and with a newly created trustee (“trust custodian”) controlled, also, by the owner. The owner then transferred the property to the trustee for the benefit of the beneficiary. In a second transaction, the owner caused the trust beneficiary to transfer its beneficial interests to two entities controlled by the buyer, and also caused all of the ownership interests in the trustee to be transferred to the same two entities controlled by the buyer. The case was governed by TOPA as in effect prior to the 2005 TOPA Amendments discussed above. The court held that the transactions, whether viewed separately or in the aggregate, did not constitute a “sale” because there was no “absolute transfer of property ‘whereby property is transferred from one person to another ..., implying the passing of the *general and absolute title, as distinguished from a special interest falling short of complete ownership.*’” *Id.* at 1206 (italics in original) (citations omitted). xxx

In Waterside Towers Resident Association, Inc. v. Trilon Plaza Co., 2 A.3d 1084 (2010), the court, knowing

of the enactment of the 2005 TOPA Amendments, but deciding under TOPA as in effect prior to the 2005 TOPA Amendments, held that a multi-step transaction was a “sale” under TOPA where a contract with a third party mandated each step in the sequence, even if, viewed separately, one or more steps might not have constituted a TOPA sale. *Id.* at 1092. At the same time, the court ruled that another challenged transaction, related but distinct, was not a “sale” under TOPA because the steps in the transaction were not mandated by a third-party contract. *Id.*⁶⁵ The court expressly declined to apply a step-transaction doctrine even though the transactions “appear to be designed specifically to avoid [pre-2005 TOPA].” *Id.* at 1091-92

Similarly, in Richman Towers Tenants v. Richman Towers, 17 A.3d 590 (D.C. 2011), pursuant to an “overarching agreement” calling for “two nominally separate transactions,” *Id.* at 594, the owner first created new property-specific LLCs and deeded the properties to the new LLCs; and, second, the owner transferred 99.99% of the LLC interests to the buyer, and also transferred the remaining 0.01% interest to an entity created by the buyer's property broker, admittedly “in order to permit the transaction to proceed without triggering the requirements of TOPA.” *Id.* (fn 7). The Richmond Towers court looked to the “‘true nature’ of the transaction,” *id.* at 602 (citations omitted), and the expressly remedial tenor of TOPA, which “‘forecloses sophisticated as well as simple-minded modes of nullification or evasion,’” *id.* (citations omitted), and

⁶² In 2021, the D.C. Council enacted a moratorium on entering into Voluntary Agreements for the period October 1, 2021 through September 30, 2023. D.C. Code § 3502.15a. This is because Voluntary Agreements, Hardship Petitions, Substantial Rehabilitation Provisions, and the like—all of which are features of D.C. rent control – are subject to abuse. See, e.g., Richardson, Katharine. “My Building Used a Rent Control Loophole. Here's What Happened.” [ggwash.org](https://ggwash.org/view/76237/dc-rent-control-laws-topa-housing-harvard-hall) Feb. 20, 2020.

⁶³ At times, it is only a subset of current residents (e.g. “members” of a tenant organization) who benefit. See A.O'Toole & B.Jones, “Tenant Purchase Laws as a Tool for Affordable Housing Preservation: The DC Experience,” ABA Journal of Affordable Housing & Community Development Law, vol. 18, No. 4, Summer 2009, pp. 367-388, at p. 381, at p.380.

⁶⁴ See, e.g., Richman Towers Tenants v. Richman Towers, 17 A.3d 590, 604 (D.C. 2011).

⁶⁵ The Waterside court stated, in dicta, that, if the 2005 TOPA Amendments did apply, then even this transaction would have to be considered a sale under TOPA. 2 A.3d at 1091-92.

characterized the Waterside case as turning on whether there was “an **overarching agreement** as a result of which a third party obtains an interest in the accommodation” *Id.* at 603-04 (emphasis added). The court noted: “The ‘two defining characteristics of a sale ... are (1) the passing of general and absolute title⁶⁶ (2) in exchange for consideration.’” *Id.* at 606 (citations omitted).

Even after the enactment of the 2005 Amendments, in determining whether a series of transactions constitute a sale “in effect,” TOPA advocates can be expected to probe whether there is an “overarching agreement” – and TOPA evaders can be expected to seek to obscure the existence of any such agreement.

■ **Separating Real Property**

Components. In Foster House Tenants Association v. New Bethel Baptist Church Housing Corporation, et al., Case No. 2019 CA 005760 R(RP) (D.C. Superior Court, filed September 3, 2019), the owner, in an open effort to avoid the application of TOPA to the transaction,⁶⁷ entered into a “Ground Lease and Development Agreement” with a developer, purporting to lease the land, but not the building, to the developer, for a period of 104 years. The owner did not give the tenants an offer of sale under TOPA, nor a Notice of

Transfer. The tenant organization filed suit, arguing that the “Ground Lease and Development Agreement” was a sale, and that, therefore, the owner should have given the tenants a bona fide offer of sale under TOPA. As of this writing, the case remains pending in D.C. Superior Court.⁶⁸

■ **Portfolio Sales & Multi-Site**

Accommodations. As noted above, TOPA defines “sale” or “sell” to include “transfer of an ownership interest in [an] ... entity which owns an accommodation as its **sole or principal asset**, which, in effect,” is a sale. DC Code § 42-3404.02(c)(1) (B) (emphasis added). This “sole or principal asset” language means that, for example, if an entity directly owns a portfolio of, say, ten residential rental properties, only one of which is in the District of Columbia, and if 100% ownership of the entity changes hands, then, arguably, TOPA should not require that the tenants of the D.C. property receive an offer of sale.⁶⁹ TOPA opponents have argued that if, in this example, the portfolio consists entirely of D.C. properties, the “sole or principal asset” language indicates that a sale of ownership interests in this owner also should not be subject to TOPA, because (among other arguments) the statute uses the term “asset” (singular) and not the term “assets” (plural).

This was precisely the argument in Sedgwick Gardens Tenants Association, et al. v. Daro Realty, Inc., et al., Civil Action No. 2014 CA 005724 B (D.C. Superior Court, filed Sept. 11, 2014), which involved a single entity that owned, in its own name, nine residential rental properties, all of which were/are located in the District of Columbia. Complaint, para. 19. When the owner, in a series of steps, sold the entirety of the ownership interests in the entity to an unrelated third party,⁷⁰ tenant organizations in three of the properties filed suit, arguing that each tenant group should have received a bona fide offer of sale, for its own property, only, or, failing that, a Notice of Transfer, at a minimum. Complaint, paras. 32 & 41-43. The defendants “affirmatively aver[red]” that no offer of sale, or notice of transfer, was required. DRR Resolution Answer, paras. 19 & 20. See also Daro Answer, paras. 19 & 20. The lawsuit was settled before trial, and details of the settlement were not made public.

The Daro defendants likely obtained a “comfort letter” (see above) from the D.C. government prior to closing the transaction. Such a comfort letter would clearly state that the transaction intended to rely upon the “portfolio exemption” because the transaction involved one owner entity which owned multiple D.C. properties, such that no one property is the owner’s “sole

⁶⁶ Recall that, as with Waterside, Richman Towers was decided under TOPA as it read prior to the effectiveness of the 2005 TOPA Amendments, which enacted the “in effect” text of the statute.

⁶⁷ Separation of real property components was part of owners’ “not-a-sale” strategies from the outset. See, e.g., the 1994 West End case, mentioned elsewhere in this review, and the 2005 Columbia Plaza case, mentioned elsewhere in this review, where, in both cases, the court held that a “master lease” did not constitute a “sale” under TOPA. This “master lease” gambit may have been put to rest by the 1989 and 2005 TOPA Amendments. Likewise, the so-called “95/5” structure (see, e.g., Twin Towers Plaza, mentioned elsewhere in this review) may no longer be viable, as a result of the 2005 TOPA Amendments.

⁶⁸ See also Foster House Tenants Association v. New Bethel Baptist Church Housing Corporation, et al., Case No. 20-CV-0635 (D.C. Court of Appeals, May 26, 2022) (reversing erroneous grant of summary judgment, remanding to Superior Court for further proceedings). Trial preparation continues. But the following statement by the Court of Appeals is notable: “Insofar as the trial court ruled that something less than an absolute transfer of title is not a ‘sale’ under § 42-3404.02(a), it was incorrect.” [Slip Op. at p.4]

⁶⁹ Perhaps the best example is the so-called Charles E. Smith situation, from the mid-2000’s, where an owner of a large portfolio of properties located in the Washington region, encompassing D.C., Maryland and Virginia, sold the portfolio via transfer of ownership interests. Until the Daro case (see text accompanying this footnote) gained notoriety, practitioners routinely referred to the “sole or principal asset” language of TOPA, quoted above, as the “Charles E. Smith exception” because the ultimate result, recognized by the D.C. government and by the parties, was that none of the Smith properties was subject to TOPA, as then in effect, because the properties were not a sufficiently significant part of the overall portfolio.

⁷⁰ The complaint alleges that there were multiple transfers among multiple entities, which also suggested that the owners sought to disguise the true nature of the transaction.

or principal asset," and therefore that a sale of 100% of the ownership interests is not a "sale" under TOPA.⁷¹

This "**Daro loophole**" is ripe for legislative repair.

- **Interference & Manipulation; Standing.** Tenants and tenant advocates report numerous instances where an owner, or its agent, pre-organized a tenant organization, and installed "cooperating" leaders who then caused the tenant organization to respond quickly to a TOPA offer of sale with a waiver or assignment of the tenants' TOPA rights, thereby denying the tenants the statutory time within which to evaluate a TOPA offer.

Owners also have been reported to have sponsored or "encouraged" rival tenant organizations, thereby drawing into question whether **any** tenant organization represents a majority of the occupied units,⁷² as required by TOPA to have standing to assert TOPA rights, D.C. Code § 42-3404.11. See, for example, Ainger Place Tenants Association v. District of Columbia, 982 A.2d 305 (D.C. 2009), which involved rival tenant organizations competing for the right to exercise TOPA rights; note that the text of the opinion does not suggest that either rival TA was sponsored or encouraged by the owner or buyer, but the case provides a roadmap for TOPA opponents seeking to frustrate tenants' rights. See also, e.g.,

Richman Towers (discussed above); L. DePillis, "Will the Real Tenant Association Please Stand Up," Washington City Paper, April 26, 2010, <https://washingtoncitypaper.com/article/386876/will-the-real-tenants-association-please-stand-up/> (last accessed Feb. 23, 2023).

Owners have challenged tenant organizations' standing in other ways, as well, by, for example, arguing that the tenant organization did not comply with corporate law in its organization and/or in its ongoing operations. See, e.g., Museum Square (discussed above); Richman Towers (discussed above). CNHED members are aware of non-published current standing disputes, also.

- **Third-Party Contract Provisions.** Owners continue to structure their transactions with heightened complexity, seeking to discourage tenants from exercising their rights. An example is a transaction to transfer partnership interests or LLC interests, rather than fee simple property ownership. This, at least, has been (partially) addressed by the D.C. Council. TOPA § 42-3404.05(a-3) says that, in this instance,

"the owner shall be bargaining in good faith if the owner offers the tenant the opportunity to acquire record title to the real property or offers the tenant

the opportunity to match the type of transfer or agreement entered into with the third party."

- **Internal Transfers.** Transfers among family members, and transfers among existing partners or members of an ownership entity, generally do not give rise to TOPA rights. See, e.g., Wallasey Tenants' Ass'n v. Varner, 892 A.2d 1135, 1141 (D.C. 2006); Williams v. Kennedy, 211 A3rd 1108, 1113 (D.C. 2019) ("transactions in which multiple individual owners reallocate their interests in an accommodation but do not bring in a new owner are not sales within the meaning of TOPA"). It can be expected that these general principles could be manipulated to disguise true sales and deny tenants the rights to which they are entitled under D.C. Law, as in Richman Towers and Waterside, and in spite of the 2005 TOPA Amendments.
- **Bankruptcy & Foreclosure Abuse.** As mentioned, TOPA does not apply to deeds of trust and mortgages, or to transfers resulting from foreclosures of such liens (Exemption (C)); or to bankruptcy sales (Exemption (E)). These exemptions are subject to abuse.

An example is a case that began in 2015 when the DC Attorney General sued the owner, an affiliate of Sanford Capital, seeking to correct substandard conditions at "a decaying 47-unit complex

⁷¹ According to news reports,

"Lauren Pair, the rental conversion and sale administrator at the Department of Housing and Community Development, responded to an inquiry from [a plaintiff] about whether TOPA applied to the sale. 'It is the agency's position,' she wrote in an email, 'that the housing provider has not violated TOPA if [the property] was transferred as part of a sale of the corporate owner whose assets included a multiple property portfolio.'

"Her explanation hinged on the 'principal asset' issue. 'The interests which were transferred were in a corporation which owned multiple assets, none of which was the corporation's principal asset,' she wrote. 'Because the transfer involved a multiple-building portfolio, TOPA was not applicable because the transfer was not deemed legally to be a sale; that is, tenants were not entitled to receive either an opportunity to purchase or a notice of transfer.'

* * *

"DHCD spokesman Marcus Williams says by email, 'As represented to DHCD by Daro's counsel, Daro intended to transfer its entire portfolio of properties to a third party purchaser; none of the single properties represented Daro's sole or principal asset. As represented to DHCD, the Daro transaction appeared to be outside the definition of a "sale" and TOPA does not apply to the sale of Daro's portfolio sale.'"

A. Wiener, "Opportunity Cost," Washington City Paper, Feb. 13, 2015, <https://washingtoncitypaper.com/article/200936/opportunity-cost-how-a-new-loophole-could-give-landlords-a/>, last accessed Feb. 20, 2023

⁷² In 2009, the Rental Housing Commission reportedly ruled, under rent control (not TOPA, but related), that a tenant organization must represent half of all **residents**, not just heads of households, in order to proceed in cases before it. See L. DePillis, "Will the Real Tenant Association Please Stand Up," Washington City Paper, Apr. 26, 2010, <https://washingtoncitypaper.com/article/386876/will-the-real-tenants-association-please-stand-up/>, last accessed Feb. 20, 2023 – reporting on a bill then pending before the D.C. Council to grant tenant associations automatic standing to sue.

adjacent to the Congress Heights Metro station.”⁷³ The property was placed into receivership in 2017. When the judge ordered the owner to negotiate exclusively with the tenants regarding sale of the property, Sanford, instead, transferred three of the buildings to a friendly developer, CityPartners, via a deed-in-lieu of foreclosure. The tenant association sued, seeking declaratory and injunctive relief in order to vindicate their rights under TOPA, which had been violated by the transfer to CityPartners.⁷⁴ In

2022, the owner settled with the tenants and agreed to transfer the property to the tenants and their chosen development partner, NHT. The following commentary is particularly cogent:

“Will Merrifield, an attorney with the Washington Legal Clinic for the Homeless who first began working with Congress Heights tenants in 2013, agrees with [then-Attorney General] Racine that the new affordable housing plan is a win for low-income residents.

But he says the drawn-out battle — a “blood fight,” he calls it — signifies how tough it can be for renters to triumph over development plans they consider not in their best interest.

“‘Congress Heights shows why there is an affordable housing crisis,’ Merrifield says. ‘It took almost a decade for people just to be able to act on their TOPA rights. It’s illustrative of how this process works and why it’s broken.’”



⁷³ Schweitzer, Ally, “Congress Heights Tenants Declare Victory In Years-Long Battle To Keep Their Homes Affordable.” *DCist*, Jan. 7, 2022, <https://dcist.com/story/22/01/07/congress-heights-affordable-housing-lawsuit/>, last accessed August 1, 2023.

⁷⁴ Giambrone, Andrew. “Congress Heights Tenants Sue Current and Former Landlords.” *Washington City Paper*, May 18, 2018, <https://washingtoncitypaper.com/article/324552/congress-heights-tenants-sue-current-and-former-landlords/>, last accessed August 1, 2023.

APPENDIX D

Housing Cooperatives: Still a Vital Option for Affordable Homeownership

TOPA is known for spawning affordable housing co-op homeownership as an alternative to condo conversions or continuing rental. With the right mix of motivation, skills and energy among residents, a co-op can be an optimal means of achieving a building renovation, long term affordability, control over management, and an ability for all residents to stay without displacement when a building sells. Affordability levels in co-ops generally will continue at existing rent levels for the very long term; co-ops tend to avoid increases to prescribed rent ceilings under LIHTC or HPTF to achieve maximum affordability. While financially a co-op may look similar to a rental, the resident

decision-making power (including around management and maintenance) and long-term security set it apart.

"For many of us, it's stability, knowing where we are going to be, where we can live, without fear. To put down roots and be a part of a living community—not one full of violence and crime—where we are comfortable." Officer of the Phoenix Tenants' Association (2017 purchase using TOPA)

The TOPA statute expressly encourages tenants to form cooperatives to acquire their properties (§ 42-3404.11(3)(B)), and to do

so tenants use the invaluable assistance of community based organizations (organizers) and development consultants. **The TOPA law is critical in allowing tenants sufficient contract time to organize their associations, explore the co-op model, and find loans to buy their buildings.**

The CNHED study tracked 29 successful co-op purchases based on TOPA notices in 2006-2019; these co-ops closed on their purchases between 2006-2023. There are three additional co-ops which purchased in 2022-2023 which are not reflected here (because TOPA notices were issued after 2020) so there are **32 new co-ops in total** for this period.

PROPERTIES WHERE TENANTS PURCHASED AS COOPERATIVE, FOR TOPA NOTICES FROM 2006-2020

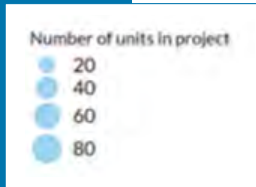
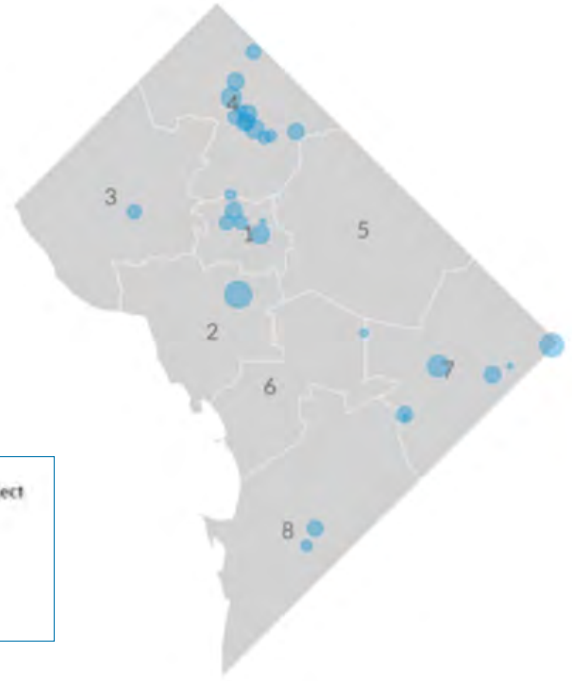
	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	29	5	3	1	1	3	1	3	3	3	2	1	1	2	-	-
Ward 1	5	-	1	-	1	1	-	1	-	-	-	-	-	1	-	-
Ward 2	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Ward 3	1	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-
Ward 4	13	1	-	1	-	2	1	-	3	2	1	1	-	1	-	-
Ward 5	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Ward 6	6	3	-	-	-	-	-	1	-	1	1	-	-	-	-	-
Ward 7	2	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Ward 8	8	-	-	-	-	-	-	-	2	1	2	1	1	1	-	-

Source: CNHED Survey; Data reflects year of TOPA notice not year the co-op formed. Two of these decided to convert to rental in order to secure LIHTC financing during this period (while reserving the right to convert back to co-op after 15 years).

The number of new co-op purchases is roughly consistent over this study period, and fairly low each year. In contrast, the rate of affordable rental redevelopments increased substantially in the latter half of this period. Nearly half the new co-ops were created in Ward 4, probably reflecting the relatively reasonable acquisition prices, significant immigrant communities, and the influence of seeing the model operate successfully in the community.

Looking at the number of housing units represented, these 29 co-ops comprise 771 units of affordable housing. The co-ops range in size from 6 units to 84 units each, with an average size of 27 units.

LOCATION OF 29 CO-OP PURCHASE PROJECTS BY WARD



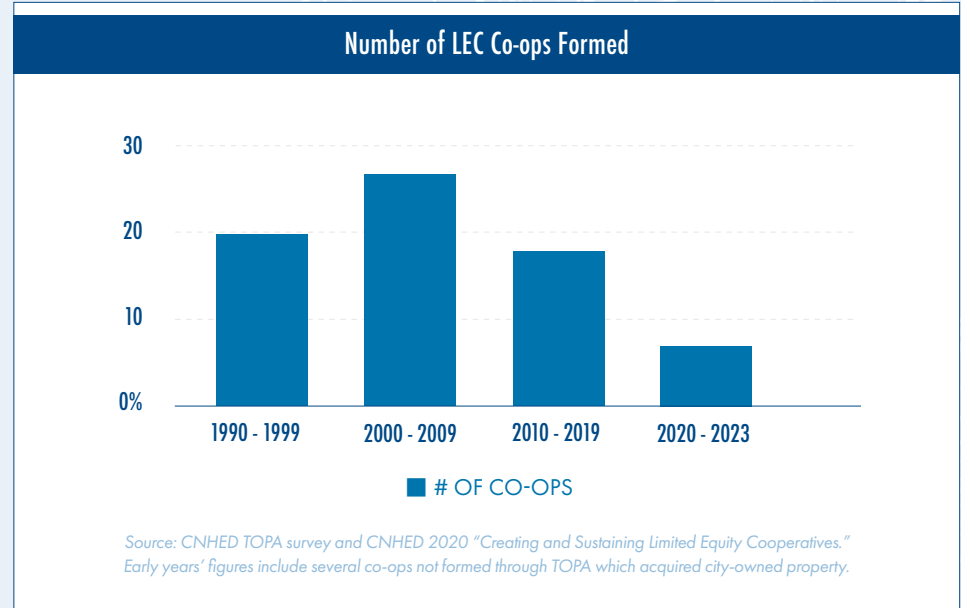
NUMBER OF UNITS WHERE TENANTS PURCHASED AS CO-OP, FOR TOPA NOTICES FROM 2006-2020

	Total	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	771	124	112	31	18	90	13	43	95	99	45	24	20	57	-	-
Ward 1	112	-	21	-	18	35	-	9	-	-	-	-	-	29	-	-
Ward 2	81	-	81	-	-	-	-	-	-	-	-	-	-	-	-	-
Ward 3	20	-	-	-	-	-	-	-	-	-	-	-	20	-	-	-
Ward 4	329	15	-	31	-	55	13	-	95	51	17	24	-	28	-	-
Ward 5	10	-	10	-	-	-	-	-	-	-	-	-	-	-	-	-
Ward 6	180	95	-	-	-	-	-	9	-	48	28	-	-	-	-	-
Ward 7	39	14	-	-	-	-	-	25	-	-	-	-	-	-	-	-
Ward 8	8	-	-	-	-	-	-	-	2	1	2	1	1	1	-	-

Historical Data on Co-Ops: During the 1990s and early 2000's, with DHCD's First Right Purchase program specially tailored to lend to tenant co-ops, the District provided the combination of time and capital which made it a **trailblazer in supporting affordable co-ops**. In fact, the years from 2000 to 2009 were the heyday for co-op purchase activity of this 34-year period: 27 co-ops with 940 units were created. Looking at the entire 20-year period 1990-2009, 47 new affordable co-ops with 1,429 units were purchased, then in the past 14 years (2010-2023) there was a decline to 25 co-ops as high purchase prices increased the degree of difficulty. Some of the recently created co-ops still are seeking permanent subsidy to cement their long-term affordability.

Immigrants are substantially represented in many co-op conversion projects, whether they are from Central America, Ethiopia or elsewhere. These families often have an interest in staying in their current neighborhoods and achieving homeownership, so an affordable co-op provides a critically needed ownership opportunity at a time when the median home price in D.C. is out of reach at \$675,000. Immigrant households may lack the extensive documented credit history and savings required for conventional ownership, which are not required for co-ops.

Financing: Financing for co-ops has become increasingly difficult during the



past decade, as high purchase prices and escalating renovation costs hit the market, while residents lack deep pockets to tap to cover acquisition or longer term financing needs. After the DHCD First Right to Purchase Loan Program stopped funding acquisitions around 2018, it was replaced with the new Housing Preservation Fund (HPF) which offers concessionary terms but loans of only short-term duration. Over two-thirds of all HPF loans and over 90% of HPLP funds have been made for rental development (much of it TOPA assignments), but **seven co-ops have received HPF loans between 2018-2023, totaling \$31.5 million in acquisition**

financing, which was critical to enable these acquisitions. The challenge ahead for some of these is to obtain affordable long-term financing to cover both the acquisition cost and substantial renovation that may be needed after years of neglect.

"It's not easy. You have to fight for what you want to do. You are the one that has to get people to believe in you and you do that through action. We did the action. In the end, our efforts paid off because everybody feels a sense of community." — Board member of Aspen Street Cooperative

APPENDIX E

Voluntary Agreements—One Route to Higher Rents That May Complicate TOPA Affordability

A voluntary agreement (VA) is a legal agreement, which must be approved by D.C.'s rent administrator, between an owner and at least 70% of existing residents to modify rents outside of what is allowed under rent control. Most commonly, residents agree to rent increases in exchange for repairs, renovations, or amenities. The property and apartments stay under the rent control program but with higher rent caps.

VAs are not specific to the TOPA process but, during this study period, were occasionally negotiated in relation to a TOPA sale. Voluntary agreements were approved within 3 years of a sale (before or after) in about 9% of sales (83 properties, with over 3,000 housing units). In over 70% of these cases, tenants at these properties formed a tenant association and often worked with a CBO.

While VAs apply to all tenants, a feature of many VAs negotiated during the period of this study is that rent increases only apply when a unit becomes vacant. While the property remains under rent control, rent increases (usually for new residents) are not limited until they reach the new limit.

Outcomes at these properties varied widely, from lower rents (with individual electric metering added) to an increase of 337%.

The average rent increase approved in these VAs was 107%, over \$1360 each month. In a typical case, the VA was contingent on the TOPA sale and provided for rent increases limited to CPI for existing residents or a buy-out, repairs throughout the property, and an increase of over 100% on rents when a unit turned over.

VAs have been controversial, as they allow current residents to negotiate away affordable rents and have played a part in the erosion of rent control. An attorney cited the utility of being able to increase rents in exchange for needed or desired repairs or amenities. Others cited inflated sales prices based on a potential VA which then necessitated the rent increases and ruled out more affordable options, to finance the high sales price. Tenants and CBOs cited examples of coercion or misrepresentation throughout the VA process and noted a powerful economic incentive to displace long-term residents who continue to pay rent control limited rents.

As of the writing of this study there is a moratorium on VAs which went into effect in March of 2021 and is set to expire October 1, 2023.

APPENDIX F

Chronology of TOPA Citations (July, 1976 - June, 2022)

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APPENDIX G

Tenant Opportunity to Purchase Act Timeline

A Chronology of Pertinent Case Law, Legislation, Periodicals, Journals

This 100-page document is available upon request. Please email Ryan Trout, CNHED's Chief Housing Officer, at rtrout@cnhed.org with "TOPA Timeline Request" in the subject line to request a copy of the document.





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