

March 9, 2018

**SENT VIA EMAIL**

The Council of the District of Columbia  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004  
(202) 724-8000

**Re: Bill 22-0315, the “TOPA Single-Family Home Exemption Amendment Act of 2018”**

Dear Council Member,

The Washington Lawyers Committee for Civil Rights and Urban Affairs (“WLC”) urges the Council to oppose the “TOPA Single-Family Home Exemption Amendment Act of 2018”.<sup>1</sup> The proposed Amendment undermines the express purposes of the 38-year old Tenant Opportunity to Purchase Act (“TOPA”), which offers tenants who are low-income, elderly or disabled avenues to avoid or minimize the destabilizing impact of an involuntary loss of housing when the building in which they rent is sold. If enacted, the Amendment will be particularly harmful to low and moderate income families, who need the multi-bedroom opportunities single family homes provide and for whom affordable rental housing in DC is becoming increasingly scarce. Moreover, the proposed Amendment is not based on sound analysis; indeed, the incomplete data upon which the Committee Report relies does not demonstrate the existence of a serious problem. Instead, the Bill appears to be animated by anecdote, coupled with a dangerous and misleading mythology about allegedly scheming tenants and is an overreaction to the requirements the law places on owners. This is hardly an adequate basis for eliminating an opportunity for housing stability and, in some cases, the benefits of homeownership, for many who would otherwise face serious housing insecurity. A better approach is that which has already been undertaken by the working group of advocates and realtors who have produced tailored improvements to the law, including shorter timelines and improved notification requirements and methods. We urge the Committee to continue that deliberate process and confine amendments to those aspects of the law on which the working group participants have been able to agree.

**1. The Proposed Amendment Contravenes TOPA’s Fundamental Purposes.**

TOPA was enacted in 1980 against the backdrop of a housing crisis that continues unabated: dramatic and relentless increases in the cost of rental housing and

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<sup>1</sup> The Washington Lawyers’ Committee for Civil Rights and Urban Affairs was founded in 1968 to address civil rights violations, racial injustice and poverty related issues through litigation and other advocacy. Our work seeks to redress economic inequities that are the product of, cause or perpetuate discrimination, particularly in the area of housing. We work closely with the private Bar to bring litigation and pursue policy initiatives to remedy discrimination.

homeownership in DC which, then and now, squeeze out low and moderate income residents.<sup>2</sup> By giving tenants an opportunity to purchase their dwelling, assign their purchase right to a third party who will protect their tenancy, or bargain for compensation or continued tenancy when their landlord decides to sell, TOPA sought, *inter alia*, to avoid dislocation of tenants who are low-income, elderly or disabled, provide relocation assistance, create new homeownership opportunities and preserve affordable rental housing.<sup>3</sup>

At least one study indicates that the law has achieved those benefits for thousands of District residents, including many residents in large, multi-family buildings.<sup>4</sup> In concrete terms, that means that a significant number of DC residents have been able to stay in their homes, cushion the often substantial cost of relocating, or, in some cases, buy their dwelling and start to build home equity that is critical to financial stability and success. This Bill would needlessly strip these benefits and protections for persons and families renting single family homes, which includes row houses, stand-alone homes, coops, condominiums and certain types of apartments appurtenant to single family homes.

When originally enacted, the law recognized that some tenants – particularly those who needed the most protection – would not have the financial means to purchase their home. It therefore deliberately incorporated the ability to assign TOPA rights to a third party who would purchase the property and permit the tenant to remain or pay the tenant for the assignment. The proposed Bill would limit the benefit of an assignment exercised by those current elderly or disabled tenants who may continue to exercise TOPA rights to an additional 12-month occupancy at the pre-sale rent.<sup>5</sup> The tenant may not receive compensation for the assignment (which likely would come from the purchaser) or for agreeing to leave before the end of their 12 month post-sale tenancy. In so limiting the benefits of assignment for the subset of single family home tenants who will remain covered by TOPA, the Bill guts a critical mechanism for securing the very opportunity TOPA purports to offer. There is no reason to do so. The seller is not disadvantaged or injured. Such assignments facilitate a sale with a buyer who is likely better able to obtain the requisite financing than the tenant, enable the tenant to negotiate for an extended tenancy or compensation in exchange for relinquishing a valuable right and fulfill the TOPA goals.

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<sup>2</sup> D.C. Code § 42-3401.01.

<sup>3</sup> D.C. Code § 42-3401.02.

<sup>4</sup> Committee on Housing and Neighborhood Revitalization Report, February 23, 2018 (“Report”) at p. 3, citing Harrison Institute for Public Law, “An Analysis of the Strengths and Deficiencies of Washington, DC’s ‘Tenant Opportunity to Purchase Act’”, Georgetown University Law Center (2006). Presumably many thousands more have benefitted in the decade following issuance of that analysis.

There is no question but that TOPA’s most significant impact has been to preserve affordable housing and home ownership opportunities for residents of large multi-unit buildings. Nonetheless, for the reasons set forth in this testimony, it is an important tool for tenants across the housing spectrum to maximize opportunities and choice.

<sup>5</sup> Elderly and disabled tenants who signed a lease by December 31, 2017 and began to occupy the premises by January 15, 2018 remain eligible to exercise TOPA rights, subject to the substantially more restrictions on assignment, discussed above.

## **2. Families Face The Most Severe Lack of Affordable Housing in DC**

The ability to rent a single family home is critically important for those in larger households, particularly families with children. Larger households have the most difficulty accessing affordable housing, as DC's supply of three, four and five-bedroom apartments is rapidly shrinking.<sup>6</sup> Currently, only 21% of rental housing units are three-bedroom, 8% are four bedrooms and 4% are five or more bedrooms. In gentrifying areas, such as Ward 5's Brookland neighborhood, developers are replacing those larger units with smaller ones.<sup>7</sup> The loss of housing, particularly for families, has significant collateral consequences. Children may have to change schools and adjust to new neighborhoods. The family may lose long-standing connections to a neighborhood, including their established sources for medical and child care. It may be difficult to get to work. As larger units are replaced with studios and one-bedroom apartments, it is increasingly difficult for families to find suitable, affordable housing. Stripping families of an opportunity to purchase or remain in a single family unit following a sale or depriving them of the chance to strike a bargain that includes payment to help defray relocation costs, worsens an already daunting challenge.

Families who are forced to relocate will likely find their options limited. Most units with 3 and more bedrooms are in Wards 7 and 8, which have a higher concentration of poverty and are heavily African American. A high percentage of dislocated families are also African American. Thus, taking away TOPA rights from families in single family homes will inevitably lead to continued, and potentially increased racial concentration east of the River. The disparate impact on families of color and the re-segregative effect of the proposed TOPA Amendments are reasons alone to reject the Bill.

## **3. The Proposed Amendment Is Not Based on Sound Analysis**

The Committee Report candidly recognizes the incomplete and inherently unreliable nature of the data on which it relies. The Committee identified 398 sales of single family homes involving TOPA offers over a 5 year period between 2009 and 2015. Committee on Housing and Neighborhood Revitalization Report, February 23, 2018 ("Report") at 5-6. Of those sales, the Committee was only able to ascertain that 19 resulted in sales to the tenant (12 condos and 7 single family residences), while acknowledging that there could be more that are not identifiable due to gaps in data, interim resales, and unidentified assignments.<sup>8</sup> *Id.* The data also fails to account for the cases in which the tenant was

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<sup>6</sup> Peter Tatian et al., Urban Institute, "Affordable Housing Needs Assessment for the District of Columbia", May, 2015 at 31, 43, 76.

<sup>7</sup> See Borum v. Brentwood Vill., LLC, 218 F. Supp. 3d 1 (D.D.C. 2016); See also Complaint, Barry Farms Tenants and Allies Association, Inc. v. District of Columbia Housing Authority, 1:1-cv-01762-EGS, ECF No. 1. Even the DC Housing Authority is eliminating family-sized units from public housing properties it is redeveloping, driving more families into a shrinking private market. The Washington Lawyers' Committee represents residents of both Brookland Manor and Barry Farm who are challenging, on the ground of family status discrimination, the efforts in both cases to reduce drastically the number of larger units which would be available to families.

<sup>8</sup> Report at 6. It also did not identify the number that may have involved "accessory units". This Bill's predecessor in 2017 only targeted those adjoining units for exclusion from TOPA. While

ultimately not the successful purchaser but was able to either remain as a tenant following the sale or negotiated terms that eased the burdens of relocation. There is no indication of serious, recurrent problems occurring in the approximately 400 offer situations over the 5 year period in question. Nor does the Report cite data to support the concern that the failure to exempt single family homes from TOPA will decrease in a significant way the number of available affordable units. In sum, it does not appear that there is meaningful data to capture the impact of TOPA in the single family home context, much less data that supports eliminating this opportunity for achieving housing stability for DC families.

WLC also takes issue with the notion that owners have been victimized by overreaching or extortionate tenant tactics. Other than anecdotal experiences from the dissatisfied witnesses, there is no data that suggests that TOPA is being hijacked by unscrupulous tenants.<sup>9</sup> Indeed, the tenant recoveries cited in the Report (some of which may not have been borne by the seller at all but by the new purchaser) suggest that the law has preserved stable housing for DC residents.

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We understand the concerns of realtors and owners that the process can cause delay and may include procedures, such as notification requirements, that need modernizing or streamlining. We encourage the workgroup of realtors and advocates to continue to explore ways to simplify the TOPA process. However, the current climate of rampant gentrification that threatens the availability of affordable housing for low and moderate income DC residents makes preservation of TOPA rights both critically important and more vulnerable to attack. The attacks should be resisted. While hardly a solution to the lack of sufficient affordable housing in DC, TOPA offers one mechanism for individuals and families to achieve greater housing stability in the face of market forces that would push them out of their neighborhoods and likely out of DC. We urge the Council to reject this and any future efforts to dilute TOPA's scope or range of benefits.

Sincerely,



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WLC opposes that narrower exemption, it is likely less harmful to families who need multiple bedrooms than the current exemption for all single family homes.

<sup>9</sup> See, e.g., Report at 5 ("TOPA was certainly never intended to distort the single-family real estate market by siphoning off the equity of homes away from homeowners and into the pockets of tenants who had the good fortune and savvy to leverage a TOPA offer into a financial windfall").