

# I. District of Columbia Tenant Opportunity to Purchase Act (TOPA)

According to Sam Zimbabwe of the Center for Transit-Oriented Development, the District of Columbia's Tenant Opportunity to Purchase Act (TOPA), which was enacted in 1980, has perhaps been most helpful policy for preventing displacement by converting larger properties, rather than smaller buildings or townhouses. Zimbabwe speculates that it has had the impact of holding down housing sales prices or slowing down transactions.<sup>1</sup>

The Georgetown University Law Center's Harrison Institute of Public Law (the "Institute") was commissioned by the Fannie Mae Foundation to study the strengths and deficiencies of the TOPA. The following is a summary of its findings.

TOPA stipulates that owners of residential properties must "give the tenant an opportunity to purchase the accommodation at a price and terms which represent a bona fide offer of sale" before they may transfer the property to a third party. Benefits to residents include:

- the option to purchase
- the right to assign their right-to-purchase to a third party
- the option co-develop the property
- the right to obtain cash payments or other considerations if they choose not to co-develop the property

The Act requires an owner to provide each tenant and the District of Columbia mayor with a written offer of sale. If the tenants wish to respond to the notice, they must incorporate a tenants association and express their interest in purchasing the building with the owner and District of Columbia Redevelopment Authority through an application for registration. Once the tenant organization has registered its application, the owner must give the organization a reasonable amount of time (not less than 120 days) to negotiate a contract of sale. This period may be extended for up to an additional 120 days (for a total of 240 days) if a lending institution provides a written notice that the association has applied for financing and the institution needs additional time to make a decision. In addition to the minimum periods required under the Act, the owner may also give the organization "reasonable" extensions without incurring liability to any third party with which it has a contract.

## Tenant Protections

The following protections are included in the Act:

- right of first refusal for a 15-day period following receipt of a copy of a third-party contract
- good faith bargaining between owners and tenants: the Act outlines specific circumstances as examples of absence of good faith; ensuring compliance with good faith bargaining presumably rests on the tenant and/or third party
- demonstration of financial ability is not a required prerequisite for entering into a contract
- cap on maximum deposit at time of contract: the maximum deposit required of tenants is 5 percent of the contract price

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<sup>1</sup> Personal communication with Sam Zimbabwe, Director, Center for Transit-Oriented Development at Reconnecting America in October 2011.

- explicit permission for tenants to exercise purchase rights in conjunction with third parties either by assigning or selling their rights to such parties
- prohibited waiving of tenant rights as specified in TOPA to receive an offer from owners; owners are also prohibited from requesting such waiver

The process of acquiring a property from a developer can take at least a year from start to end and involves the following steps:

- Tenant organizing, e.g., forming a cooperative to purchase the property. Housing counseling agencies like the Harrison Institute provided specific services in this area.
- Purchase and sale negotiation and agreements.
- Due diligence.
- Closing.
- Refundable nominal deposit.

#### **Case Study: National Housing Trust/Enterprise Preservation Corporation's Work with Residents under TOPA**

The Institute's study also identified implementation barriers of a financial, technical, and educational nature. These involve residents, technical assistance providers, and lenders. MAPC spoke with Scott Kline, Vice President of the National Housing Trust (NHT)/Enterprise Preservation Corporation, which is one of the DC-area development consultants that has worked with DC residents under TOPA, to learn more about the successes and challenges of TOPA implementation.

Scott shared that the Act has facilitated the creation of tenant cooperatives and it is a great tool for housing preservation. However, a challenge that has emerged with the housing crisis is that the District of Columbia's Housing Trust Fund, which is funded through recording fees and has historically supported the redevelopment of properties purchased by tenants under TOPA, has dwindled. In the booming housing market, 100% of properties purchased by tenants under the TOPA were financed by the Housing Trust Fund. The Fund was big and tenants used these funds from the District to engage developers and do property rehabilitation and development plans. When funds diminished, tenant cooperatives got stuck with buildings needing serious repairs but without the capital needed to fix them. NHT has personally represented two cooperatives. The tenants were able to negotiate the purchase of the buildings, but encountered serious difficulty in refinancing them due to the lack of Housing Trust Fund money. One property was able to secure Neighborhood Stabilization Program funds to refinance it; the other has not had that success and has not been redeveloped. What NHT has learned is that there needs to be more options for gap financing: an availability of bonds and tax credits to allow tenants to refinance properties so that tenants are not reliant on one main source of funding to facilitate the purchase of property.<sup>2</sup>

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<sup>2</sup> Personal communication with Scott Kline, Vice President at the National Housing Trust/Enterprise Preservation Corporation in October 2011.