

**Testimony of Rachel Rintelmann  
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**Before the Committee on Housing and Neighborhood Revitalization  
Council of the District of Columbia**

**Public Hearing Regarding:**

**Bill 22-0739**

**“TOPA Bankruptcy Tenant Displacement Prevention Act of 2018”**

**May 21, 2018**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits this testimony to express our strong support for Bill 22-0739, the TOPA Bankruptcy Tenant Displacement Prevention Act of 2018. The Tenant Opportunity to Purchase Act (“TOPA”) is perhaps the single greatest tool available to tenants in the ongoing struggle to preserve safe and affordable housing in the District, and we have witnessed firsthand just how catastrophic it can be when those rights are undermined by the bankruptcy process. This bill would ensure that, even when a landlord declares bankruptcy, tenants can continue to use TOPA to protect the safety and continuing affordability of their homes. Further, by closing off the ability of unscrupulous landlords to do an end-run around TOPA protections via bankruptcy proceedings, this bill would help prevent the unnecessary loss of affordable units from the District’s housing stock – a crucial consideration given that preserving affordable housing is critical at this time in the District’s history.

**TOPA AS TOOL FOR ANTI-DISPLACEMENT AND THE PRESERVATION OF SAFE AND AFFORDABLE HOUSING**

The power of TOPA to protect tenants in the District cannot be overstated. It provides tenant groups a rare opportunity to level the balance of power, providing them leverage to bargain for repairs, improvements, and affordable rents. Through TOPA, some tenant groups opt to purchase properties and convert them to cooperatives or condos, giving tenants a unique opportunity to own a stake in their own homes and communities. Other groups choose to assign

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<sup>1</sup> The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” For more than 80 years, Legal Aid attorneys and volunteers have served tens of thousands of the District’s neediest residents. Legal Aid currently works in the areas of housing, family, public benefits, consumer, and appellate law. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

their rights to purchase, working with a developer that will partner with the tenants and commit to improvements that benefit not only the tenants, but the community writ large.

No matter the way in which tenants exercise their rights, TOPA is critical as a way to ensure that buildings are maintained and improved and long-term District residents are not displaced. TOPA is perhaps the single most powerful tool in the fight to preserve affordable housing and prevent displacement of low income tenants, and we urge the Council to ensure that it can be used to maximum effectiveness.

## **LEGAL AID'S EXPERIENCE WITH THE CURRENT, FLAWED SYSTEM**

In the past year, Legal Aid has represented tenants in three separate properties that have been affected by the TOPA bankruptcy exemption. We do not need to speculate about the harm caused by the exemption because we have seen it, firsthand. We speak from experience when we say that the protections provided by this bill are critical. The ability of landlords to avoid TOPA obligations when they declare bankruptcy can thwart productive efforts on the part of tenants and potential purchasers to address unsafe housing conditions, and further, lead to the loss of affordability and mass displacement of tenants. Worse yet, buyers and sellers know that bankruptcy proceedings short-circuit the TOPA process, and can deliberately exploit this to execute sales that ultimately harm tenants.

### **The TOPA Bankruptcy Exemption can have Catastrophic Consequences for Tenants**

Last year, we began working with a group of tenants who had been referred to us because of their landlord's failure to address the unsafe conditions of their building. The prior owners of the building had listed the property for sale, which was great news for the tenants; TOPA provided them an unparalleled opportunity to leverage their rights to identify a purchaser who would partner with them to finally make necessary improvements and ensure that the tenants were not displaced. They identified a purchaser, one which would commit not only to making desperately-needed repairs, but also to keeping the property affordable, which would allow the long-term incumbent residents to remain in their homes.

But, before the sale of the property could go through, one of the owners of the building declared bankruptcy, voiding the tenants' TOPA rights and thrusting them into the complicated and unfavorable forum of bankruptcy court.

Despite the fact that the tenants' TOPA rights were extinguished, their preferred purchaser remained committed, and appeared in the bankruptcy action with an offer to buy the property. However, the bankruptcy court, viewing its duty to the creditors as paramount, held an auction and ultimately approved the sale of the property to another purchaser who outbid the tenants' preferred purchaser by a mere \$10,000 in a more than \$3 million dollar sale. In issuing the ruling, the judge held that he would not consider subjective factors such as which purchaser was better for the affordability of the building. Because TOPA expressly does not apply in bankruptcy cases, the court has reasoned, factors such as the wishes and interests of the tenants simply cannot be considered.

That narrow \$10,000 loss has proven catastrophic for the tenants. After almost a year of refusing to make repairs, the new landlord has now filed a substantial rehabilitation petition, which – if approved – would raise the rents by 125% and very likely have the effect of displacing every last one of the tenants in the building. While these developments have been devastating, they were not entirely unexpected. The purchaser operated under an LLC linked to one of the co-founders of Sanford Capital, so the tenants had little hope that repairs would ever be made.

Had this law been in effect, and the sale not exempted from TOPA, the court would have been forced to at least consider the tenants' interests and exercise of rights. And, if the court nevertheless ordered the sale of the property to the purchaser not selected by the tenants, the tenants would have had adequate time to work with their purchaser to secure the additional funds necessary to buy the building.

The significance of the TOPA bankruptcy exemption in this case cannot be overstated: 34 units of affordable housing could have been rehabilitated and preserved as affordable, protecting the residents, many of whom have lived there for more than two decades. Instead, the apartments continue to languish in deplorable conditions, and the landlord is proposing to more than double the rents, displacing all of the incumbent residents in the process.

### **The TOPA Bankruptcy Exemption Creates an Opening for Abuse by Unscrupulous Landlords**

It is not a secret to landlords that bankruptcy is an avenue to subvert TOPA. In one of Legal Aid's current cases, the landlord, wishing to sell the property, entered into a contract for sale which would typically trigger the landlord's obligation to serve TOPA notices to the tenants. But, instead, the landlord and the purchaser inserted a term into the sale contract that *required* the seller to declare bankruptcy, which it did, the very next day. By extinguishing the tenants' TOPA rights through bankruptcy, the seller forged a largely unobstructed path to a quick sale of the property.

So appealing is this end run around TOPA that we believe some landlords have been filing for bankruptcy even when their property is solvent as way to avoid repair obligations and push through quick sales of property. In both of the Sanford Capital bankruptcy cases in which Legal Aid has been involved, the landlord had a contract for a sale of the property that exceeded by far all of the debts owed even before filing for bankruptcy, so there was no apparent reason to seek the relief afforded by bankruptcy – other than to avoid obligations under local law, including TOPA. Affordable housing developers, usually depending on securing funding and/or tax credits from the city, simply cannot be competitive in a bankruptcy bidding war, and this tactic clears the way for for-profit developers to purchase buildings and fail to make repairs, displace tenants, or both.

To be sure, not all landlords will abuse the process in this way. Some landlords will legitimately need the protections of bankruptcy. But, in those cases, an insolvent landlord will have often failed to make needed repairs and perform basic upkeep of the property, which means that the tenants' right to identify a purchaser that is committed to making repairs is of critical import. Without the leverage of their TOPA rights, the tenants are further victimized by a system

that values the highest bidder over the public interest. This bill provides much needed protections, and will serve as a powerful tool in the fight to preserve safe and affordable housing.

### **LEGAL AID URGES THE COUNCIL TO MAKE THE LAW AS PROTECTIVE OF TENANT GROUPS AS POSSIBLE**

Certainly, there will be those who argue that this bill creates insecurity for would-be purchasers at bankruptcy. But, the real estate market in the District is competitive, and unlike many other jurisdictions, we have little cause for concern that this law will chill purchasers at bankruptcy. Instead, we believe that this law – even with lower incentives – would encourage good faith purchasers to work with tenants on the front end, restoring to the tenants that critical bit of leverage for repairs and affordability that TOPA was intended to provide. Certainly, the risk of a post-bankruptcy purchase by the tenants can be mitigated by any purchaser willing to engage with – and address the needs of – the tenants. We see no problem with that; indeed, purchasers and would-be landlords *should* be incentivized to understand the needs of a building they are about to own. In our experience, each bankruptcy sale has attracted multiple purchasers, and this bill simply gives those purchasers an incentive to work with the tenants to protect all parties and obviate the need for the tenants to exercise the post-bankruptcy sale option.

There are also those who will argue that this bill will disincentivize purchases at bankruptcy. However, Legal Aid believes that, if anything, it provides *too much* assurance to purchasers. We agree that tenant-purchasers should reimburse the bankruptcy purchaser the cost of capital improvements and even closing costs; certainly a bankruptcy purchaser should not lose money on the transaction. But we worry that ensuring a 5% profit – or more, when one accounts for the fact that all costs would also be reimbursed – to purchasers who may have owned the property for only a matter of months could undercut the tenants’ exercise of TOPA rights, as it may mean that the purchase price exceeds market value and therefore may be impossible to finance.

The practical reality is that the funding sources available for the purchase and management of affordable properties in the District are limited. It simply may not be possible for tenants to secure financing that would cover not only the cost of a building plus a 5% markup, but also two sets of closing costs and associated expenses. We believe that a 100% tenant purchase price is more than adequate to protect the purchaser at bankruptcy, while still ensuring that tenants can meaningfully avail themselves of this newly created right.

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In sum, we believe that this legislation provides much-needed protections for tenants and we urge the Council to join us in supporting it. We thank you for the opportunity to testify.