Building a Local Housing Preservation Ecosystem: Tenant Opportunity to Purchase (TOPA) and Local Policy

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TOPA OVERVIEW AND HISTORY OF DC’S POLICY
The Context of DC’s Preservation Ecosystem

• DC is a federal district with home rule
  – Practically, DC is a city, a county, and a state

• DHCD finances affordable housing, provides neighborhood based services grants, and administers portions of the rent stabilization and condominium conversion process.
  – DC also has a separate housing authority and a housing finance agency

• Along with LIHTC, CDBG, HOME, etc. DC has many local programs
  – DC Housing Production Trust Fund $100 million a year
  – Local Rent Supplement Program funds over 3,000 households
DC’s Preservation Programs

• Mayor Bowser’s Housing Preservation Strike Force found DC government was too reactive and made 6 recommendations
  – Establish a Preservation Unit in DHCD
  – Create a Public-Private Preservation Fund
  – Create a Small Properties Preservation and Affordability Program
  – Implement the District Opportunity to Purchase Act (DOPA)
  – Advance preservation under the Tenant Opportunity to Purchase Act (TOPA)
  – Allow low income senior renters to age in place.
TOPA – DC’s special sauce?

• The Rental Housing Conversion and Sale Act of 1980, as amended (D.C. Law 3-86) (the Conversion Act).
  – The Tenant Opportunity to Purchase Act (TOPA) is included under the Conversion Act, and regulates the conversion of use, sale, and transfer of rental housing in District of Columbia. Tenants:
    • Have the opportunity to invoke their rights to purchase
    • Have first rights of refusal
    • Receive offer of sale notices
    • Receive notices of the transfer and the conversion of property to cooperatives or condominiums

• The District Opportunity to Purchase Act (DOPA).
  – This act empowers the Mayor with the right to purchase buildings with five or more rental units of which 25 percent are deemed as “affordable” subordinate to TOPA
Making a Right a Reality

In order for the opportunity to purchase under TOPA to be an exercisable right you need policy and programs to support it:

1) Technical assistance and help in organizing tenants.
   – DHCD assists ~ 10 nonprofits with CDBG funds and a few of these (incl. HCS) explicitly work on TOPA.

2) Facilitate financing that can accommodate TOPA timelines and low income rent levels.
   – DHCD Development Finance Division and other sources
TOPA FINANCING
DFD Mission

DC DHCD
Development Finance Division (DFD)

Provide timely and compliant gap-financing in the preservation and production of affordable housing and community facilities.
DFD Program Areas

• Affordable Housing Financing (5+ Units)
  • Production (New Construction)
  • Preservation (Substantial Rehab)
• Community Facilities Financing
• Tenant Opportunity to Purchase Assistance (TOPA) Acquisition Financing
Project Selection

• Consolidated Affordable Housing RFP

• DHCD-owned Land Dispositions

• Acquisition Financing for TOPA Projects
Acquisition Financing for TOPA Projects

• First Right to Purchase Assistance Program
  - Codified in DC law and regulations

• Funding for acquisition, soft costs, critical repairs

• Current funding source:
  - Local Housing Production Trust Fund
  - $10 million budgeted for TOPA acquisitions per year
Eligible Projects

• Demonstrate TOPA rights legitimately triggered
  • Tenant Association (TA) members received a TOPA Notice

• Building of 5 or more units

• Income qualified
  • At least 50% of households meet the low-moderate income definition

• 50% or more of members of TA are interested in purchasing
Ownership Structures

1. Limited Equity Cooperative

2. TA forms Joint Venture with affordable housing developer and holds a percentage ownership interest

3. Tenants assignment of TOPA Rights to affordable housing developer
   - Development agreement for affordability
Development Team Capacity

• If TA proceeds as a LEC must have critical development team members in place:
  • Housing counselor / TA provider
  • Development consultant
  • Tenant’s attorney
  • Management agent (by closing)
TOPA / HPTF Funding Terms

• Up to 125% of acquisition price or appraised value
  • Acquisition
  • Reasonable soft costs
  • Critical repairs as supported by a Physical Needs Assessment

• Interest rate
  • 0% for LECs
  • 3% for developers

• 75% cash flow payment

• 40 year loan term

• 40 year affordability requirement
Application Requirements

• Online application

• Until Oct. 2017, rolling applications were accepted

• Required information:
  • Site control – purchase & sale agreement
  • Zoning compliance
  • Development budget, including plan for rehab
  • Third Party Reports
    • Phase I Environmental Site Assessment
    • Appraisal
    • Physical Needs Assessment
  • Evidence of going through TOPA decision-making process
Successes – Preservation of Affordable Housing

• Effective lever for affordability in the District

• Over 1,400 units purchased through DHCD TOPA Acquisition funding in 26 projects since 2015
  
  • 10 Limited Equity Cooperatives – 247 units

  • 16 projects where tenants assigned their rights – 1,172 units
Successes – Tenant Empowerment

• Tenants have a say in deciding what happens when their building is slated to be sold or demolished

• TOPA enables tenants to form cooperatives and condo associations that provide ongoing ownership
Challenges – Timeframe + Ownership Structure

TOPA Timeframe
• TOPA purchase deadlines
  → Nearly all projects require full or partial bridge loan, which adds cost

Limited Equity Cooperative/Condo structure
• Stable coop/condo governance is critical
  → Need technical assistance on front end
  → Need long-term assistance – ongoing challenge for DC
• Need resources prior to application for acquisition funding
  → Requires predevelopment funding
Challenges – Long-Term Financial Feasibility

- Ownership structure
  → Residents must understand pros/cons of each option and make an informed, community decision

- Affordability mix
  → How will affordability mix agreed to at acquisition impact the ability to complete a rehabilitation?

- Residents willingness to “raise their own rent”
  → Especially for cooperatives
  → Developer’s affordability commitments to TA must be realistic
Challenges – Rehabilitation Strategy

• Most properties purchased through TOPA have substantial rehabilitation needs
  → Most projects return to DHCD through the competitive RFP for additional funding, but only 1/3 of applications are funded
  → What is the plan if the project’s rehab is not funded?
  → Must plan rehabilitation strategy at acquisition
Challenges – Small Buildings

• Difficult to assist small buildings
• No assistance for buildings between 2-4 units
• Lack of economies of scale
  → Increased costs
Critical Program Elements

• Need an affordable housing funding source for acquisition and rehabilitation

• Resources to support tenant capacity
  • Technical assistance is key
  • Plan for LEC capacity support long-term (asset management, governance)
  • Require inclusion of professional development team members

• Consider a framework to prioritize properties at risk of affordability loss

• Consider purchase timeframes carefully –
  • Balance property owner rights with objective of preserving affordability