



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

- 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*

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

DC DHCD Development Finance Division (DFD)

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

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

- 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

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