



Tenant Opportunity to Purchase Act in Washington, DC: A brief history

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Abstract

This Update looks into the history and the current contestation of Washington, D.C.'s Tenant Opportunity to Purchase Act (TOPA). TOPA provides tenants of rental housing with the right of first refusal when an owner seeks to sell a property. Enacted in the 1980s, TOPA has been a crucial tool in the fight of working-class people to win true housing justice in the U.S. capital, particularly for Black and Brown working-class residents who have long been systematically denied self-determination over where they live. Since its inception, working-class Black and Brown tenants in dozens of properties have used TOPA to win ownership, and especially during the first years, TOPA was widely successful, helping thousands of tenants. Yet, in recent years, TOPA has been systemically undermined as dedicated funding was cut. In this update, we thus review TOPA's legal framework, history, and effectiveness, as well as current organizing efforts to hold on to the act as a tool for D.C. residents to win control over their housing.

Keywords

Housing justice, tenant organizing, right of first refusal, Washington, D.C.

Introduction

D.C.'s Tenant Opportunity to Purchase Act (TOPA), which gives tenants of rental housing the right of first refusal when an owner seeks to sell the property,¹ was and could still be an important tool for working-class people to win true housing justice, particularly Black and Brown working-class residents who have long been systematically denied self-determination over where they live (Hill, 2024). Since its inception, working-class Black and Brown tenants in dozens of properties have used TOPA to win ownership and control over their homes (Howell et al., 2020; Huron, 2014). In this update, we will review TOPA's legal framework, history, and effectiveness. We will also describe current organizing efforts to use the act as a tool for D.C. residents to win control over their housing and as an example for other jurisdictions. We argue that the elimination of dedicated funding for tenants to turn their properties into limited equity cooperatives and a focus on tenants assigning their rights to third parties in exchange for input (not ownership) in the redevelopment of the property has greatly diluted one of TOPA's most important features.

Legal framework

D.C. Code states that '[b]efore an owner of a housing accommodation may sell the housing accommodation or issue a notice to vacate for purposes of demolition or discontinuance of housing use, the owner shall give the tenant an opportunity to purchase the housing accommodation at a price and terms that represent a bona fide offer of sale' (§ 42-3404.02(a)). Tenants may assign or sell their TOPA rights to a third party in exchange for whatever consideration the tenants find acceptable.² Tenants living in properties with more than five units,³ where there is not already a Tenant Association (TA), have 45 days to incorporate such an association and deliver a Statement of Interest and Application for Registration to both the landlord and the Department of Housing and Community Development (DHCD), after which the landlord delivers them an offer of sale (D.C. Code § 42-3404.11(1)).⁴ After delivering the Statement of Interest, the TA has 120 days to negotiate a contract for sale with the owner (D.C. Code § 42-3404.11(2)). Thereafter, the TA has another 120 days to secure financing and settle the transaction (D.C. Code § 42-3404.11(3)). TAs that are trying to form limited equity cooperatives have at least 180 days to settle.⁵

Working-class Black DC residents won TOPA through organized political struggle

TOPA, one of the oldest and strongest laws of its kind in the United States (Abraham, 2023; O'Toole & Jones, 2009), was enacted in 1980 in order to slow the loss of affordable

¹ D.C. Code § 42-3404.02(a).

² D.C. Code § 42-3404.06.

³ There is a similar process for smaller buildings with 2-4 units, but those buildings are not the focus of this writing, see D.C. Code § 42-3404.10.

⁴ D.C. Code § 42-3404.11(1).

⁵ D.C. Code § 42-3404.11(3)(B).

housing and displacement of longtime residents (Glaude, 2023; O'Toole & Jones, 2009), and it has since been one of D.C.'s strongest tenant organizing tools (Glaude, 2023; Keller, 2024). Yet, it is no coincidence that D.C. has one of the strongest tenant purchase laws in the country (O'Toole & Jones, 2009) but rather has been a result of the strong influences from civil rights and tenants' rights movements (Howell, 2017; Huron, 2014; Kumfer, 2023).

In the early 1970s, D.C. was over 70% Black and had become known as Chocolate City (Howell, 2017; Hunter & Robinson, 2018). After nearly a century of governance by unelected commissioners, winning local control for the majority Black residents in 1973 was a key victory for the civil rights movement (Howell, 2017). By 1975, the majority of the council members were former civil rights activists who came to power with a great deal of grassroots support (Howell, 2017; Huron, 2014).

Those newly elected council people, however, came into office in the middle of a severe housing crisis (Huron, 2014). Neighborhoods like Adams Morgan and Capitol Hill had become attractive to higher income white families (Kumfer, 2023). Property values in many central city neighborhoods were increasing by double digits annually for several years in a row (Harney, 1978). Owners of rental properties, eager to capitalize on the rising real estate values, began to renovate and convert rental units into owner-occupied housing and to evict tenants whose incomes could not support the properties' new price points (Kumfer, 2023).⁶

Throughout the 1970s, groups of organized tenants fought back against displacement (Huron, 2014). Among their efforts was the 'Stop People Removal' campaign that called for a city office to help low-income tenants purchase their buildings and convert them to limited equity cooperatives (Huron, 2014). In 1980, the Council passed TOPA as part of the Rental Housing Sale and Conversion Act (Glaude, 2023). The overarching purpose was to strengthen the bargaining position of tenants living in properties being sold to prevent displacement, preserve affordable housing, and create ownership opportunities for lower income tenants.⁷ The new law saw immediate results. In the first year, 50 buildings with over 6,000 units converted to cooperatives (Huron, 2014). Dedicated funding from the district that provided TAs with financial assistance was critical to the act's success as a tool for tenants to gain ownership of their properties.

Throughout its tenure, working-class Black and Brown D.C. residents have used TOPA to resist displacement and to become collective owners of the properties they live in (Howell, 2017; Huron, 2014). Residents who purchased their buildings using TOPA and turned them into limited equity cooperatives gained more than affordable housing. Collective ownership also gave them control over the properties where they live and a high degree of residential stability which they could not have gained in for-profit rental housing (Howell, 2017; Huron, 2014; Reed, 2013).

⁶ D.C. Code § 42-3401.01.

⁷ D.C. Code § 42-3401.02. Purposes; *see also* Medrano v. Osterman, 885 A.2d 310 (D.C. 2005).

The First Right Purchase Program was a necessary tool to help tenants use TOPA to create limited equity cooperatives

Whether a TA is able to purchase their building, conduct needed renovations and/or turn the property into a limited equity cooperative often hinges on the availability of public investment to help close funding gaps (Glaude, 2023; Reed, 2013). In order to enable residents with limited incomes to take advantage of the rights established through TOPA, the city established the First Right Purchase Program (FRPP) (Reed, 2013). FRPP provided low-income loans to TAs to assist with the purchasing of the properties and converting them to limited equity cooperatives (Huron, 2014; Reed, 2013). Funding for the FRPP came from HUD's Community Development Block Grants (CDBG) (Howell, 2017; Reed, 2013). Later the district would supplement CDBG funds with funding from the local Housing Production Trust Fund (HPTF) (Reed, 2013). In exchange for favorable loan terms, the cooperatives were required to remain limited equity for the life of the loans, keeping them affordable (Huron, 2017). There was a steady increase in the number of limited equity cooperatives coming online through the 1980s and 1990s, with a peak in 2008 and a decline after 2009 (Glaude, 2023; Howell et al., 2020; Reed 2013). The program was discontinued by the DHCD in 2018 (Glaude, 2023).

The FRPP was replaced with the Housing Preservation Fund (HPF) (Glaude, 2023). Unlike FRPP, HPF only offers short-term loans and low- and moderate-income cooperatives often have a difficult time securing long-term financing (Collins, 2024; Glaude, 2023). Furthermore, the HPF is not dedicated exclusively for TA's seeking to purchase their property to preserve affordable housing as these funds can also be obtained for rental development (Glaude, 2023). In fact, the majority of HPF loans have gone to fund rental development rather than securing affordable housing within the existing housing stock (Glaude, 2023).

TOPA can prevent displacement from gentrifying neighborhoods and give tenants control and stability through collective ownership, but decreased funding and increased focus on assignment of rights dilutes TOPA's potential

Decreased funding, rising property values and a culture change in city government have all made it harder to use TOPA to transform rental property into limited equity cooperatives, but the numerous cooperatives that remain active in the city today are proof that working-class D.C. residents can use TOPA to gain control over their housing and thereby long-term stability. In the years after TOPA and the FRPP were enacted, federal funding for community development programs like the FRPP declined (Howell, 2017; Reed, 2013). In addition to decreased funding to help with acquisition and renovation costs, there has also not been enough funding available to maintain strong community organizations to educate tenants about their rights and help them to get organized (Glaude, 2023). As funding decreased, property values increased rapidly (Glaude, 2023). There was also a shift away from a community development and social equity ethos that valued the empowerment and participation of residents to a paradigm that values transforming neighborhoods so that they

will be attractive to upwardly-mobile, college-educated, mostly white residents (Howell, 2017). Many point to the administration of Mayor Anthony Williams as a turning point in the city away from a focus on social justice to the sort of economic development that would attract more private investment and new residents, which fueled gentrification and displacement (Timburg, 2003; Iweala, 2016).

Between 2006 and 2020 it was far more common for TAs to assign their rights to a third party in exchange for some form of consideration than it was for them to form a cooperative (Glaude, 2023). During that time less than 800 or about 4% of the nearly 20,000 units where tenants exercised TOPA rights became limited equity cooperatives (Glaude, 2023). Today there are nearly 100 limited equity cooperatives that still exist in D.C. (Howell et al., 2020). Most of them are located in the city's central city neighborhoods that have been heavily gentrified in recent decades (Howell et al., 2020; Keller, 2024). The carrying charges in these buildings are usually about half of the fair market rent in D.C. (District of Columbia Limited Equity Task Force, 2019), which has allowed working-class, Black and Brown families to remain in neighborhoods they would otherwise have been priced out of (Howell, 2017). Additionally, when properties transitioned to limited equity cooperatives using public funds, they preserved a higher percentage of housing for low- and very low-income households and for longer periods of time than similar housing created through Low Income Housing Tax Credits (LIHTC) (District of Columbia Limited Equity Task Force, 2019).

Even though it has not produced as many limited equity cooperatives in recent years, TOPA continues to be a strong tool for preserving affordable housing. Affordability was expanded or preserved for 16,224 units of the 19,170 where tenants exercised their TOPA rights between 2006 and 2020 (Glaude, 2023). However, without the control and stability that collective ownership of a cooperative brings, residents often find themselves unhappy with their new landlords⁸ or at risk of displacement again when the new owner attempts to sell the building years later (Gallagher, 2022). That is why it is critical that the D.C. government restore funding to the FRPP, so that DC residents in danger of displacement can turn their buildings into limited equity cooperatives.

Organizing for TOPA today

Despite difficult odds, D.C. housing organizers continue to try to make TOPA's promise a reality and to help organizers in other jurisdictions win their own TOPA legislation. With TOPA being undermined by the DHCD, housing organizers are fighting even harder to preserve this important piece of housing justice legislation. Organizers at ONE D.C., a community-based organizing group in the district that is a member of the nation-wide alliance Right to the City (RTTC), launched its Homes for All D.C. (HFA DC) project in 2022 as its primary effort to use TOPA to win collective ownership for tenants.

⁸ As both a community organizer and an attorney representing TAs, Brook Hill has encountered multiple tenants who went through a TOPA process and find themselves continuing to deal with poor conditions and unresponsive management. Hill has also encountered TAs who find themselves renegotiating TOPA assignments when LIHTCs expire after 15 years.

HFA DC recruits TAs as organizational members, helps them to become strong organizations and to negotiate with their landlords for repairs, rent reductions and increased services. HFA DC also engages its member TAs in political education around TOPA, community control and limited equity cooperatives before they receive TOPA notices. Community organizers are trained to guide participants through the various stages of the application and purchasing process, explaining how they could make TOPA work in their favor.

Recently, they had their first major successes: One HFA DC member TA recently negotiated the sale of their building by assigning their TOPA rights to a faith based developer in exchange for renovations, long term affordability for 100% of the units and a seat on the developer's board for one TA member. Another HFA DC building was listed for sale in the fall of 2024 and the tenants hope to be able to buy the building and turn it into a limited equity cooperative.

More so, organizers at ONE D.C. are in dialogue with housing organizers in Los Angeles and Oakland, California as well as in New York, Minneapolis, Houston, Memphis, and some cities in Oregon. They share their experiences with TOPA in D.C. and advice on how tenants can purchase their buildings and form limited equity cooperatives. Their collective goal is to help establish similar laws to strengthen tenants' rights in as many US cities as possible.

Conclusion

D.C.'s TOPA has great potential as a tool for not only affordable housing but also housing justice and equity when coupled with a dedicated funding stream like the FRPP. When tenants can find the funding necessary to buy their buildings and convert them to cooperatives, they are able to win the control and security of ownership that has long been denied to working-class Black and Brown D.C. residents. Unfortunately, in recent years the D.C. Council has passed legislation limiting TOPA's reach, and Mayor Bowser recently introduced legislation that would further erode the protections and promise of TOPA (Koma 2025). Despite many difficulties, housing justice organizations in D.C. believe in the on-going power of TOPA as a means to put a just and caring housing future into practice on the ground.

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