

Government of the District of Columbia
D.C. Office of the Tenant Advocate



Recently Enacted and Pending Tenant Rights Legislation
March 30, 2018

Recently Enacted Tenant Rights Legislation

- ***Law 21-63, the “TOPA Bona Fide Offer of Sale Clarification Amendment Act of 2015” (effective 2/26/16)***
 - Clarifies the meaning of a “*bona fide* offer” where, rather than sell it, the housing provider plans to demolish or discontinue the housing use of an accommodation with 5 or more units;
 - Clarifies that a TOPA offer may be deemed *bona fide* only if the offering price is based on rights the owner currently has as a matter-of-right, and not on a speculative “future value”;
 - Establishes the right of a tenant organization to a neutral appraisal of the accommodation’s value.

- ***Law 21-172, the “Rental Housing Late Fee Fairness Amendment Act of 2016” (effective 12/8/16)***
 - Defines the term "late payment" to mean rent that is unpaid within 5 days of the due date, or any longer “grace period” provided for in the lease;
 - Caps late fees at 5% of monthly rent charged;
 - Prohibits evicting a tenant on the basis of the nonpayment of a late fee;
 - Prohibits charging interest on the late fee or charging the late fee more than once;
 - Requires that the late fee policy be included in a written agreement;
 - Establishes penalties, including civil fines and treble damages in the event of bad faith on the part of the housing provider.

- ***Law 21-197, the “Rent Control Hardship Petition Limitation Amendment Act of 2015” (effective 2/18/17)***
 - Limits the amount of a hardship conditional rent increase to 5% of the rent charged;
 - Limits the conditional rent increase to instances in which the housing provider can demonstrate negative net income (note: the housing provider remains entitled to the “guaranteed” 12 percent return on equity for purposes of the hardship petition itself);
 - Requires the housing provider to refund any excess rent paid by the tenants within 21 days in the event that the final order adjusts the conditional increase downward.

- **Law 21-210, the “Residential Lease Amendment Act of 2016” (effective 2/18/17)**
 - Prohibits the housing provider from imposing a mandatory service or facility fee on a rent controlled unit, unless the fee has been approved pursuant to a Services and Facilities Petition or a 70% Voluntary Agreement (this prohibition does not apply to optional fees such as storage space or parking fees);
 - Prohibits the housing provider from entering a rental unit in a non-emergency situation unless: (1) the tenant has been given at least 48 hours written notice absent the tenant’s agreement otherwise; (2) the entry occurs between 9 am and 5 pm, and not on a Sunday or federal holiday, unless the tenant has agreed to another time; and (3) the entry is for a reasonable purpose;
 - Requires a housing provider to mitigate damages due to a tenant’s breach of a rental agreement, thus prohibiting the housing provider from collecting avoidable damages;
 - Clarifies that a tenant in a month-to-month tenancy is never required to provide more than 30-day notice of the tenant’s intention to vacate the premises;
 - Restricts lease provisions requiring the tenant to provide more than 30-day notice of a tenant’s intention to vacate the premises;
 - Prohibits the housing provider from unreasonably withholding consent to subletting, unless the lease explicitly prohibits subletting;
 - Establishes penalties, including treble damages in the event of bad faith by the housing provider, for violations of the Act or if the housing provider includes any prohibited clause in the lease.

- **Law 21-211, the “Relocation Expenses Recoupment and Lien Authority Amendment Act of 2016” (effective 2/18/17)**
 - Gives the OTA “tax lien authority” to recoup the cost of emergency housing assistance provided to tenants who have been displaced by a fire or building closure, where the displacement is caused by housing provider dereliction.

- **Law 21-239, the “Elderly and Tenants with Disabilities Protection Amendment Act of 2016” (effective 4/7/17) [*partly subject to funding].**
 - Lowers the cap on the annual standard rent increase for a rent controlled unit occupied by an elderly tenant or a tenant with a disability to the least of (1) the Consumer Price Index (CPI-W); (2) the Social Security COLA; or (3) 5% of the current rent charged;
 - Requires the Rental Housing Commission to publish the maximum rent increase that an elderly tenant or tenant with a disability may be subject to;
 - Requires housing providers to notify elderly tenants or tenants with a disability of the maximum rent increases they may be charged;
 - Makes it easier for a tenant to establish elderly or disability status by permitting filing of the registration form by mail, fax, email, or in person at the Rent Administrator’s office;

- Provides for penalties if a housing provider frivolously or in bad faith challenges a tenant's registration claim;
 - *Raises the income threshold for a low-income elderly person or person with a disability to qualify for an exemption from the capital improvement surcharge from \$40,000 to 60% of the area median income for a household of 4 persons; and expands the exemption to also include all other types of housing provider petitions.
- ***Law 21-259, the "Fair Criminal Record Screening for Housing Act of 2016" (effective from Apr 7, 2017)***
 - Assists in the successful reintegration of those with a criminal history by removing barriers to securing adequate housing accommodations;
 - Restricts a housing provider's inquiry into a housing applicant's criminal background or arrest history until after a conditional offer of housing is made;
 - Allows a housing provider to consider an applicant's criminal background or arrest history only if it occurred during the last 7 years and only with respect to specific crimes;
 - Defines housing accommodation, housing provider, and rental unit in the same manner as the Rental Housing Act of 1985;
 - Provides exceptions to prohibitions under this legislation where it is required by Federal or District law, or where there are three or less rental units and one is occupied by the owner;
 - Establishes penalties ranging from \$1,000 to \$5,000 depending on the size of the accommodation;
 - Gives enforcement authority to the Office of Human Rights (OHR).
 - ***Law 21-270, the "Four-unit Rental Housing Tenant Grandfathering Amendment Act of 2016" (effective from Apr 15, 2017) [subject to funding]***
 - Disqualifies from the "small landlord" exemption from rent control any rental unit that the owner has acquired through a TOPA exemption, including the TOPA exemption for *inter vivos* transfers (transfers from living family members).

Pending Tenant Rights Legislation

- ***Bill 22-25, the "Rental Housing Affordability Stabilization Amendment Act of 2017"***
 - Limits the standard annual rent increase for non-elderly and non-disability tenants who live in rent control units to the lesser of the Consumer Price Index (CPI-W) or 5% of the rent charged;
 - Limits the vacancy rent increase when to 5% of the current rent charged.
- ***Bill 22-33, the "Displacement Prevention Amendment Act of 2017"***
 - Doubles the current maximum amount (\$1000) that renters who reside in a certain designated displacement risk zone may claim as a Schedule H tax credit for rental payments.

- **Bill 22-100, the “Preservation of Affordable Rent Control Housing Amendment Act of 2017”**
 - Prohibits agreements between a tenant or a tenant association and a housing provider that would result in inequitable treatment either among current tenants, or between current tenants and future tenants;
 - Explicitly applies the prohibition to settlement agreements and Voluntary Agreements under the District’s rent control law.

- **Bill 22-170, the “At-Risk Tenant Protection Clarifying Amendment Act of 2017”**
 - Authorizes the Office of the Attorney General to enforce the Consumer Protection Procedures Act against housing providers who violate tenant protection laws.

- **Bill 22-438, the “Discounted Rent Clarification Amendment Act of 2017”**
 - For a rent controlled unit, requires that the amount of the discounted rent, and not the maximum legal rent, must be the basis for any rent increase for the duration of the tenancy;
 - Limits the rent charged after the expiration of the initial lease term to the average monthly rent charged, plus the amount of any authorized rent increases thereafter;
 - Requires the housing provider to file an affidavit certifying the discounted rent and maximum legal rent within 30 days after entering into a written lease or rental agreement that includes a discounted rent.

- **Bill 22-441, the “Rental Unit Fee Adjustment Amendment Act of 2017”**
 - Increases the “Rental Unit fee” (the fee that housing providers must pay the District annually for each rental unit owned) from \$25 to \$30;
 - The legislative intent is to allocate the revenue generated by this fee increase to fully implement Law 21-239 (which in relevant part, subject to funding, provides low-income elderly and disability tenants with an exemption from rent increases due to any housing provider petition, while giving the housing provider a tax credit for an equal amount).

- **Bill 22-442, the “Rental Housing Registration Update Amendment Act of 2017”**
 - Requires housing providers to reregister rental accommodation with the Rent Administrator’s office within 120 days of the legislation’s effective date.
 - Requires that registration statements are made available for public inspection online on DHCD’s website.
 - The legislative purpose is to secure updated data on the number, composition, viability and affordability of the District’s current rent control housing stock.