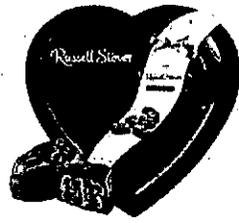


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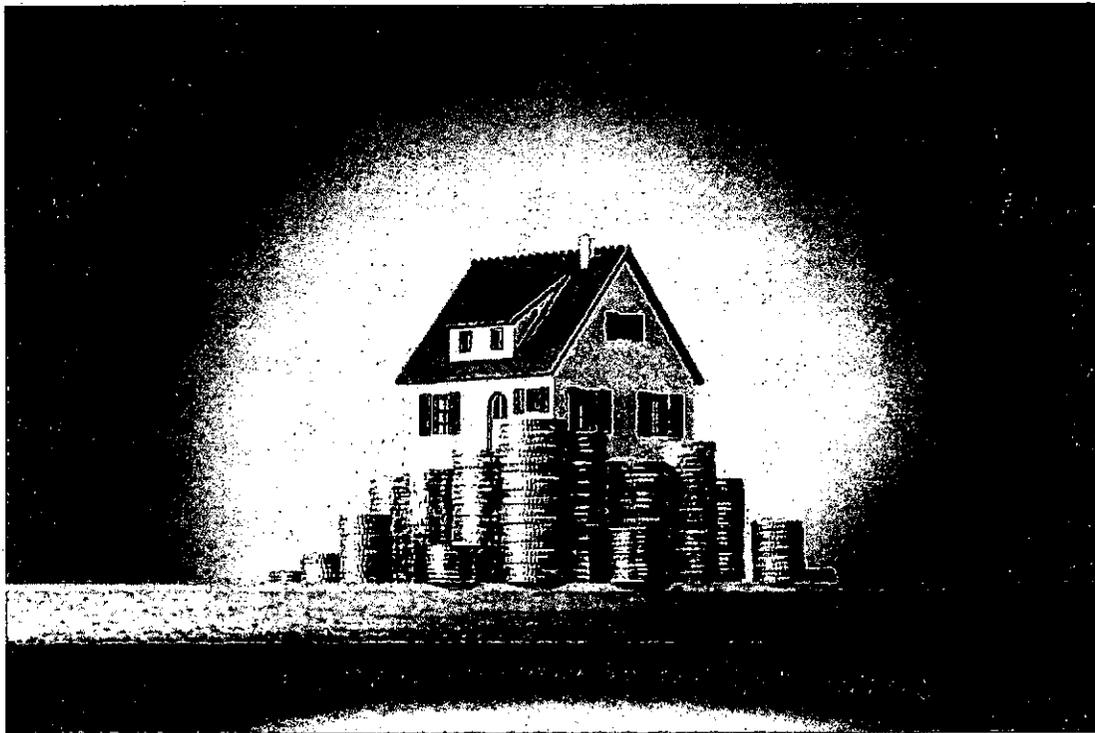
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A Law Used To Stifle Landlords Is Reducing Affordable Housing In Washington, DC

While TOPA has served to protect tenants' rights, it has had unintended consequences.

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In Washington, D.C., an old law to protect renters is getting new attention. The Tenant Opportunity to Purchase Act,

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present, TOPA is holding up or blocking real estate transactions, causing grief for developers and homeowners and victimizing low-income residents stuck living in buildings owners are unable to sell but forced to maintain at a financial loss.

Ostensibly, TOPA was created to protect tenants' rights, which is important in Washington where about 30 percent of the District's 672,000 residents rent instead of own a home. On its most basic level, the 1980 law is simple. "Under TOPA," one publication wrote by way of explanation, "prior to the sale of a housing accommodation, the owner must send, by first class mail, a written offer of sale to each tenant and the Mayor of the District of Columbia." The letter must state the property's asking price and the terms of the sale. "In the case of a single-family home, a condominium, or cooperative unit... the tenant has 30 days to provide a written statement of interest to purchase the property." If no offer is made, the sale goes through. If an offer is made, "the tenant has a minimum of 60 days... to negotiate a contract of sale with the property owner."

Originally, the law was envisioned, according to one source, as a way "to protect tenants from potentially advantageous landlords and buyers." That is to say, the law was trying to stop a developer from buying a property rented by low-income tenants and converting it to high-end housing. While TOPA has served to slow down this type of conversion, it has had unintended consequences.

One problem arises from the fact that a tenant can state he is willing to buy a property, but he is not required to demonstrate the financial means necessary to buy it. Even more troublesome, a tenant can assign -- in other words, sell -- his TOPA rights to a third party such as a lawyer or a developer. This creates a situation where an outside party can complicate the sale of a property either by holding up the sale or inflating the value of the TOPA rights or both. It also violates the spirit of the law if the point of the original legislation was to protect the ability of a tenant to keep his home, not produce a bidding opportunity where TOPA rights can be auctioned off to the highest bidder, which is what has started to happen in Washington.

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Consider the drama surrounding the recent sale of a home on Capitol Hill. The homeowner put her house on the market and received an offer. But when she gave notice to her tenant who leased the basement apartment for \$800 a month, the tenant executed her TOPA rights, holding up the sale of the house. When the homeowner offered the tenant \$10,000 to buy the TOPA rights, the tenant rejected the offer because she had multiple offers from third parties.

"[My agent and I] are accepting offers which consider the ratio of time I am able to stay in the home and the buyout amount," the tenant wrote to the homeowner. The conflict ended up in court.

Because of such examples — and there are many — critics of TOPA call it "tenant blackmail"; defenders call it "tenant capitalism." The bottom line is a tenant has the ability to cash in on the sale of a property without putting up any money of his own, since he can hold a potential sale hostage until he signs over his TOPA rights. This is in stark contrast to real estate laws in, say, New York City, where a tenant can buy his apartment when his building converts to a cooperative but he is required to actually purchase the unit. He has a financial stake in the deal in a way tenants selling TOPA rights do not.

Sometimes the tenants band together and form a tenants' association, which will represent all tenants concerning TOPA rights. But often a tenants' association serves to drag out the purchase process with little or no intention of facilitating a sale. Such was the case with Museum Square. "So far," *The Guardian* reported in an article about the sale, "the... tenants' association of Museum Square is half way through the TOPA process. Seizing on their right to buy first... tenants have managed to stay put by claiming the number (\$250 million) issued by their landlord as a sales price did not constitute a bona fide offer — meaning it did not represent the buildings' current market value (the number instead reflected the estimated value of the luxury building that would have been built in its stead)."

In another case, tenants living in the low-income apartment complex surrounding the Congress Heights Metro station have exerted their TOPA rights, blocking the complex's sale. The owner of the buildings, Sanford Capital, has been heavily criticized in the media for failing to maintain the property when in fact the company merely wants to divest itself of the property by selling it. It's being prevented from doing so by the tenants, who have filed a TOPA lawsuit, guaranteeing the current situation, unacceptable to both the owner and the tenants, will continue on.

According to media reports, summer interns renting a room and even squatters can claim and sell TOPA rights. Critics of TOPA believe D.C. Mayor Muriel Bowser should work with the City Council to reform TOPA to ensure that residents can exert their rights but not hold a sale hostage to a process that is being used to delay real estate transactions through extortion of landlords. Unless the law is changed, things will only get worse, slowing down the construction of new housing. Oddly enough, this won't create more affordable housing in D.C. — as TOPA was designed to ensure — but make what housing is available even more costly.

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