

Council of the District of Columbia

MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: Chairman Phil Mendelson
FROM: Councilmember Brianne K. Nadeau *Brianne K. Nadeau*
RE: Notice of Intent to Move ANS at the July 28, 2025 Legislative Meeting
DATE: July 23, 2025

This memorandum serves as notice that I intend to move an amendment in the nature of a substitute (ANS) for the following measure at the July 28, 2025 Legislative Meeting:

- **Bill 26-164, Rebalancing Expectations for Neighbors, Tenants, and Landlords (RENTAL) Act of 2025**

These amendments will maximize the consistency and predictability of transactions, encourage new investment in the District's housing market, and preserve tenants' ability to engage in good faith negotiations. This ANS amends TITLE IV of the committee print, which covers the Tenant Opportunity to Purchase Act. See below for a summary of major provisions:

Accelerates transactions by eliminating a 45-day time period for tenants to challenge an ownership transfer. This challenge period is redundant to others and unnecessarily slows down transactions. The repeal of this challenge period was included in the introduced version of B26-0228, the "Common Sense TOPA Reform Amendment Act of 2025".

Prohibits any future tolling (i.e. freeze or suspension) of TOPA timelines. For about two years, all TOPA transaction timelines ground to a halt during the COVID public health emergency. The TOPA "tolling" period from 2020-2022 broke a longstanding expectation that property owners, developers, and investors could historically rely on. While the tolling period is over, it is still having clear impacts on an industry that relies on consistency and predictability.

This amendment would bar any future freeze on TOPA timelines that might hold up transactions. The intent is to renew investor confidence in the District by re-affirming that the statutory deadlines are in fact deadlines, not suggestions.

Exempts all new construction from TOPA for the first 10 years, regardless of building affordability levels. A blanket exemption is much easier to administer compared to the means-tested exemption in the RENTAL Act as introduced. Setting the new construction exemption at 10 years is consistent with the TOPA exemption for downtown properties approved by Council in 2023. It further aligns with a report that found that "in buildings constructed after 2007, all transactions subject to TOPA occurred within the first 10 years of ownership".¹

Modifies the definition of "tenant" to prevent misuse of TOPA while ensuring that no legitimate tenant is left out. In older buildings, particularly in buildings which have changed owners over the years, it is common for neither party to have a copy of the lease. Legal precedent

¹ <https://www.dcpolicycenter.org/publications/topas-promise-and-pitfalls-in-dc/>

has settled that tenancy can be established in various ways without a written lease, such as payment and acceptance of rent. This definition would exclude those who may be entitled to occupy the unit (a relative, guest, etc.) but are not the party legally obligated to pay the rent.

Codifies the holding in *Williams v. Kennedy*² that TOPA “... does not apply to transactions in which multiple individual owners reallocate their interests in an accommodation but do not bring in a new owner.” It is a common practice for developers to include an internal “buy-sell” provision in the governing organizational documents which allows for existing owners to buy-out each other’s interests or otherwise reallocate the value of their ownership interests without bringing in a new third-party. These provisions are included in the governing documents because over time different owners may contribute additional amounts of capital for the operation, repair and renovation of the housing accommodation, and therefore their interests reallocate in value between or among the other owners. As such, codifying the holding in *Kennedy* will ensure that the law does not adversely impact developers in the District.

Strikes a provision that would exempt any property from TOPA if there is a promise of a new affordability covenant. The inclusion of this provision in the Committee Print raises concerns, including:

- **Administrability** – This exemption does not comport with existing timelines and notice requirements and thus it is unclear how it would be applied and enforced. The exemption only applies if an affordability covenant is entered into at the time of sale or transfer.

However, an offer of sale under TOPA must be provided to tenants “[b]efore an owner of a housing accommodation may sell the housing accommodation”.³ Similarly, a notice of transfer (i.e. that a transaction is exempt from TOPA) must be provided to tenants prior to the transfer being finalized. Under the Committee Print’s language, property owners would be claiming an exemption from TOPA predicated on a commitment that has not happened yet.

- **Affordability** – The Committee Print exemption applies to new covenants for buildings if 51% of the units are restricted to 80% Median Family Income or below. For context, 80% MFI for a family of three is up to \$111,400/year and the approved rent for an 80% MFI unit is up to \$2,430/month for a 2BR – above the cost of many market rate units in parts of the District.⁴

Further, the Committee Print exemption does not account for the existing rent of a unit, making it possible for a building to be exempted from TOPA even if rents ultimately increase.

- **Enforcement** – Even if the above issues are addressed, an exemption of this nature would require close monitoring by DHCD for each 20-year period to ensure that rents charged

² 211 A.3d 1108, 1110 (D.C. 2019)

³ <https://code.dccouncil.gov/us/dc/council/code/sections/42-3404.02>, Subsection (a).

⁴ <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/2024-2025%20IZ%20ADU%20price%20schedule%20-%202024-8-30.pdf>

are in line with the covenant, annual reporting requirements are met, and tenant incomes are recertified annually.

Adds to the definition of “sale” multiple transfers of minority interests that, in effect, result in a transfer of the property.

Restores the “cooling off period” in which tenants cannot assign purchase rights unless having met with a tenant support provider and aligns this time period with existing TOPA timelines for buildings with 2-4 units. This is a critical component of recommendations from the Council-funded study on TOPA, to “address cases and concerns of abuse and bad actors.”⁵

Removes the provision that would restrict the ability for tenants and tenant associations to negotiate a successful TOPA transaction. The Committee Print significantly narrows a section of the TOPA law that currently allows for “any consideration which the tenant, in the tenant’s sole discretion, finds acceptable”⁶.

According to the committee report, the intent of this provision is to address cash buyouts, noting that “[a]lthough buyouts are rare, they often cause contention.”

While well-intentioned, the Committee Print’s amendments to section 406 of TOPA *will not eliminate cash buyouts*, which may happen at any time regardless of whether TOPA negotiations are in play.⁷

In effect, the Committee Print would push more buyouts outside of the TOPA process when tenants do not have representation.

It is clear that many Councilmembers, residents, and industry representatives share an interest in addressing exploitative buyouts – whether that exploitation impacts the tenant or the buyer. If those issues are to be properly addressed, Council must consider the matter of buyouts across the board, not just within the confines of legislation on TOPA. Otherwise, the Council may cause more buyout problems than it solves.

I plan to work with colleagues to introduce standalone permanent legislation at the end of the Council’s summer recess that regulates all cash buyouts, not just those that are within the narrow scope of a TOPA transaction.

A draft copy of the amendment is attached.

Please contact Abby Boshart, Legislative Aide (aboshart@dccouncil.gov) and David Meni, Legislative Director (dmeni@dccouncil.gov) with any questions.

⁵ https://thecoalitiondc.org/wp-content/uploads/2023/11/CNHED_TOPAStudyNov09.pdf, page 12.

⁶ <https://code.dccouncil.gov/us/dc/council/code/sections/42-3404.06>

⁷ The circulated Committee Report rationale does not acknowledge the distinction between a buyout related to TOPA rights and a buyout related to a tenant’s occupancy right. The Committee Print would restrict the former but not the latter.