



DISTRICT OF COLUMBIA LAND TITLE ASSOCIATION
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February 11, 2005

The Honorable Jim Graham
D.C. Council
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Re: Bill No. 16-50 (Tenant Opportunity to Purchase Act)

Dear Mr. Graham:

As the President of the District of Columbia Land Title Association ("DCLTA"), I have been authorized and directed to provide you with the DCLTA's views on Bill No. 16-50 relating to the Rental Housing Conversion and Sale Act of 1980 and, more specifically, to the Tenant Opportunity to Purchase Act ("TOPA") provisions.

As you may be aware, DCLTA represents a large group of District of Columbia title insurance underwriters, title agents, settlement companies, settlement attorneys and other title professionals involved with the conveyance of real property in the District of Columbia. As DCLTA representatives have often mentioned to the D.C. Office of Tax and Revenue ("OTR"), the DCLTA constitutes the best tax collector the District of Columbia does **not** employ. Our members are responsible for collecting, at real estate closings, millions of dollars owed to the District of Columbia by property owners for transfer and recordation taxes, unpaid real property taxes, sewer and water charges imposed by WASA, and a host of other city-imposed charges (collectively, "taxes").

The issuance of title insurance in connection with these transfers has become an institutionalized requirement. Owners want the assurance that they have marketable and insurable title to their property and lenders want the assurance that their liens for monies loaned have the expected validity and priority. The presence or absence of title

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insurance will often determine whether a transaction can or cannot close successfully. Unless a transaction closes successfully, no taxes are collected and then paid to the District of Columbia.

Because of the present language in TOPA, title insurance underwriters customarily take an "exception" to coverage for TOPA-related matters as part of a sale of any property to which TOPA applies, *i.e.*, title insurance underwriters will **not** undertake the risk of providing affirmative coverage for TOPA-related matters to a new owner and, most often, a lender **unless** the title insurance underwriters have very high confidence that they are able to determine, with relative certainty, that TOPA compliance has occurred and that there is little or no risk that any tenant or any other party can legitimately challenge the sale of the rental accommodation. As you may be aware, a sale determined to violate TOPA is void. If title insurance coverage includes TOPA-related matters and the sale is later deemed void, the title insurer suffers a very significant loss.

Until recently, the title insurance underwriter members of DCLTA had confidence that they knew what TOPA required and what evidence they would require from their insureds to have the TOPA exception deleted from both an owner's and a lender's title insurance policy. Recent litigation over the proper interpretation of TOPA's current language, however, has injected considerable uncertainty as to what TOPA may actually require for compliance. As a result, the title insurance underwriters are **not** prepared to delete the TOPA exception unless the owner, regardless of the structure of the transaction, can demonstrate with absolute certainty that the seller-owner has given all requisite notices to the tenants and all applicable time periods have expired or, alternatively, that the transaction does not fall within the statutory definition of a "sale".

The pending Bill would significantly amend TOPA, and that is a matter of great concern to DCLTA and its members.

If the Council is so inclined, DCLTA does not object to passage of § 2(a)(1) of the Bill. Title insurance underwriters are familiar and have worked with D.C. Code § 42-1102.02 (2001), *i.e.*, the transfer of an economic interest in real property statute. Solely from a title standpoint, such a definition would introduce certainty where confusion now reigns.

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DCLTA does, however, have serious concerns regarding §§ 2(a)(2) and (3) of the Bill.

To the extent the Council favors adding §2(a)(2), the DCLTA urges the Council to exclude from the operation of TOPA those transactions which otherwise qualify for the following enumerated exemptions under the existing transfer and recordation tax exemption statute, more specifically, DC Code §§ 42-1102 (7)(parent/child and husband/wife transfers); (10) personal representative of the deceased estate to the distributee); (17) (beneficiary of a trust to the trustee); (18) (trustee of a trust to the beneficiary); (19) (transfer from trustee of a trust that would be exempt if made by the grantor of the trust); and (22) (partnership to limited liability company where partners and LLC members are the same).

With respect to § 2(a)(3), the DCLTA is opposed to the inclusion of any language which introduces confusion, rather than clarity, to the circumstances under which TOPA could apply. The language, as proposed, would result in an untenable position for underwriters and their agents because those title professionals would not and could not know, with certainty, whether a "... buyer will become able to control the management of an entity...." As a result, the title insurance underwriters in D.C. would probably be inclined not to delete the TOPA exception in any transaction which could even possibility run afoul of such vague terminology. Without deleting the exception, it is very unlikely that an affected transaction would successfully close.


Finally, while it is implicit in the Bill, DCLTA strongly recommends that the effectiveness of the provisions of Bill 16-50 be made explicitly **prospective only** from the effective date of any revision of the current language of TOPA.

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We hope that these comments are helpful to the Council as it considers Bill 16-50. If you or any other Councilmember have any questions regarding the position of the DCLTA or the comments provided above, please do not hesitate to contact the undersigned.

Sincerely yours,

DISTRICT OF COLUMBIA LAND TITLE
ASSOCIATION

By: 

David H. Cox
President

cc: Board of Directors of the District
of Columbia Land Title Association
Chairman Linda W. Cropp
Councilmember Phil Mendelson
Councilmember Sharon Ambrose