

In new TOPA case, DC Court of Appeals does not apply court-approved settlement exemption to limit tenant purchase rights.

29 May 2025

[Christopher A. Glaser](#)

In the District of Columbia, a tenant's right to the first opportunity to purchase a housing accommodation through the Tenant Opportunity to Purchase Act (TOPA) does not arise where the initiating third-party transfer does not qualify as an arms-length "sale." Transfers pursuant to foreclosure sales, bankruptcies, court orders or court-approved settlements are exempted from TOPA and tenants have traditionally been excluded from the purchase. However, the District of Columbia Court of Appeals has recently ruled that not all court-approved settlements are exempted and further examination of the underlying agreement is required.

In *Farina v. Janet Keenan Housing Corp.*, Mr. Farina was a tenant of Janet Keenan Housing Corp., a charity identifying its purpose as preserving and promoting affordable housing. In September 2022, Mr. Farina learned that JKHC was soliciting buyers to purchase the property and alerted District authorities. Once JKHC entered into a sales agreement, the District filed suit to enjoin the sale alleging it would be contrary to JKHC's charitable purposes. Mr. Farina invoked his TOPA rights and, during the pendency of the District's litigation, filed a separate suit to stop the sale as the tenants were not afforded their TOPA rights. After the District's litigation was resolved through a court-approved settlement confirming that the sale did comport with JKHC's charitable purposes, the Superior Court dismissed Mr. Farina's TOPA action as the sale was now statutorily exempt from TOPA. Mr. Farina appealed.

The Court of Appeals noted that a classic sale is one in which an owner agrees to transfer property in an arms-length third-party contract and that the statutory exemptions, such as foreclosures or tax sales, are not typically between unaffiliated parties with equal bargaining power resulting in a fair market price. In the District's litigation, the third-party contract was entered into before the District sought to enjoin the suit and the terms of the contemplated sale were not arrived at through litigation. Instead, the court-approved settlement merely resolved the District's challenge to the sale, not the sale itself and the terms of the sale to the third-party were not altered by the settlement. The Court concluded that the proposed transfer was a classic "sale" notwithstanding that it was only allowed to proceed due to the court-approved settlement. Mr. Farina retained his TOPA rights and the matter was remanded.

Historically, TOPA has caused title practitioners to give pause and double-check that a tenant's TOPA rights had been properly extinguished and, when practitioners determined that transfers followed one of the statutory exemptions, it provided title practitioners with some level of comfort. Following *Farina*, one should take an additional step to determine whether or not the statutory exemption was properly invoked given the liberal construction that courts are obligated to afford when interpreting TOPA.

Jackson & Campbell, P.C. represents title insurers and insureds in Maryland, Virginia, and Washington, D.C. and we strive to keep our clients and other title professionals up to date on various developments in the law. Additionally, we present no-cost in-house updates of the nation's most noteworthy cases and national trends following the spring and fall American Land Title Association's Title Counsel meetings.

If you have any questions about this case or laws impacting real estate in and around the Washington, D.C. region, feel free to contact us. Our [Real Estate Litigation and Transactions](#) Practice Group is ready to assist.

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