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DC's First Right Purchase Program Helps to Preserve Affordable Housing and Is One of DC's Key Anti-Displacement Tools

By Jenny Reed

Introduction

DC's First Right Purchase Program (also commonly known as "tenant purchase") has helped to preserve nearly 1,400 units of affordable housing over the past decade and is one of the District's key tools to help residents stay in their homes as housing costs rise around them. The program provides low-interest loans to tenant groups that want to purchase — and in many cases rehabilitate their building — when their landlord has decided to sell. Without financial and technical assistance provided by the First Right Purchase program, many tenant groups are unable to take advantage of the important right they have in DC to potentially purchase and preserve their housing when their apartment building is being sold.

DC's First Right Purchase program, which is managed by DC's Department of Housing and Community Development, has several benefits. It is a tremendous tool to help prevent displacement as neighborhoods develop and to preserve affordable housing in those neighborhoods for a significant length of time. In addition, the First Right Purchase program offers many low- and moderate-income residents their first opportunity for homeownership. It provides them with control over their living conditions, and gives them the ability to address neglected repairs to the buildings they live in. Because First Right Purchase helps preserves existing low-cost housing, it can also be cost effective, with lower costs per unit than other affordable housing development programs, according to a recent survey of some member projects by the Coalition for Non-Profit Housing and Economic Development.

Reductions in resources have resulted in limited use of the program in recent years. The majority of funding comes from either the District's Housing Production Trust Fund or the federal Community Development Block Grant — both of which had been significantly reduced in recent years. Just 35 new units were preserved using this program in fiscal year (FY) 2012 while over 5,000 units of rental housing up for sale across 99 buildings in DC. First Right Purchase can play a critical role in preserving housing that is affordable to low- and moderate-income residents, but only if it is adequately supported.

This paper looks at District-supported First Right Purchase projects from FY 2002 through FY 2013[1], using data obtained from DC's Department of Housing and Community Development. It recommends that the District increase funding to more effectively deploy the First Right Purchase program as an affordable housing tool.

A Closer Look at First Right Purchase in DC: Quest Cooperative

In 2004, the residents of Quest Cooperative received a notice that their building would be put up for sale. The 23 unit building in Columbia Heights was occupied by many low-income, long-time DC residents. The residents decided to form a tenant association in order to buy the building and with help from DHCD, obtained a loan, bought the building, and prevented the displacement of the residents from their homes and their neighborhood.

Since the tenants purchased Quest Cooperative, the building has undergone a full renovation and now has high efficient heating and cooling systems, energy star appliances, storage units and a community space. In 2010, the co-op underwent a big transition when the long-term board president moved out. Because of the full participation of the members new leaders filled the gap and a strong and committed co-op board remains in place today. Quest is stable financially and fully occupied.

Source: Mi Casa, Inc., technical service provider and development consultant to the cooperative.

This paper also makes several recommendations to enhance the effectiveness of the First Right Purchase program. Changes to the underwriting guidelines are needed to ensure that tenant groups can get financing in a timely way. In addition, caps on funding might need to be increased on a project by project basis to make sure that a broad array of tenant groups are able to purchase their buildings. The District also should improve transparency of the availability of funds for tenant purchase. Finally, increased access to technical assistance for tenant associations after their purchase is completed can help ensure that they can manage as building owners, including complying with DHCD's loan requirements to submit certain financial documents on a regular basis — a current issue that can be improved with ongoing technical assistance.

What is the First Right Purchase Program?

The District's First Right Purchase program helps low- and moderate-income DC tenants who form tenant associations and wish to exercise their first right of purchase to buy their building and maintain the housing as affordable.[2] All DC tenants have the opportunity to purchase when the building goes up for sale, under DC's Tenant Opportunity to Purchase Act which was passed as part of the Rental Housing Conversion and Sale Act of 1980.[3] In a multi-family building with five or

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[1] As of September 20, 2013.

[2] The First Right Purchase program largely covers loans made to tenant associations and does not typically include when tenants assign their rights to a developer from the outset of the acquisition and development process. Therefore, this paper does not consider or include data on every instance where tenants exercised their rights to preserve their housing, but when tenants utilized the First Right Purchase program.

[3] For a more detailed overview of the tenant purchase process, see "An Analysis of the Strengths and Deficiencies of Washington, D.C.'s Tenant Opportunity to Purchase Act," Prepared by the Harrison Institute for Public Law and Georgetown University Law Center, 2006. Available at: http://cdm16064.contentdm.oclc.org/cdm/singleitem/collection/p266901coll4/id/719/rec/11.

more units, these rights are given to tenants collectively, so a majority of the tenants have to have interest in, and form, a unified tenant association to exercise these rights.

While the right for tenants to purchase exists, tenants are not given a special purchase price under the law, but must be able to match the price a third party has offered for the property or negotiate a price with the seller if no third party offer exists. Many properties require major repairs or rehabilitation and low and moderate-income tenants often need assistance because they do not have the financial resources or access to credit. In addition to financial assistance, tenants often need legal and technical assistance to negotiate something as complex as buying a multi-family building.

This is where DC's First Right Purchase program steps in to provide financial and technical assistance to tenant associations. The program, which is managed by the District's Department of Housing and Community Development (DHCD), provides low-interest loans to tenant associations to purchase, and if needed, to rehabilitate their building. The loans can be used for down payment, acquisition costs, "earnest money" deposits — deposits made to demonstrate a buyer's commitment to the offer — and legal, architectural and engineering costs. Rehabilitation funds can also be requested.

In some cases, tenants assign part or all of their rights to a non-profit or for-profit developer in return for the developer's commitment to rehabilitate and maintain the units as affordable rentals for a set period of time. In those instances, loans are made to the developer and are not typically included in the First Right Purchase program (although in DCFPI's review of the data three buildings where tenants assigned some or all rights are included). These developers normally apply for DHCD financial assistance through other programs also managed by DHCD.

DHCD also funds non-profit organizations to provide technical assistance and organizing help to residents going through the tenant purchase process. Currently, this assistance is offered by DHCD to tenant groups every time a building owner makes an offer of sale. In addition to this assistance, most low- and moderate income tenant associations also receive help from attorneys and from developers or development consultants.

Generally, when an owner notifies the tenants of a plan to sell the building, tenants must form a tenant association (if they do not have one) and register their intent to purchase their building within 45 days (30 days if the tenant association already exists).

After the tenant organization has registered, it has 120 days to finalize a sales contract with the building owner and put down an earnest money deposit. Tenant groups then have 120 days to purchase but can be given an extension of another 120 days if they have a letter showing that the tenants have applied for financing but that the lender needs more time to make a decision on the financing. Other reasonable accommodation extensions can also be given by the owner to the tenants.

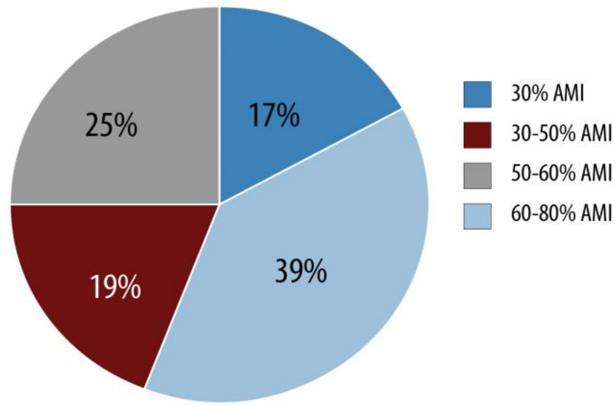
Once tenants purchase their building, they can develop the units as a market rate co-operative (co-op), a limited equity co-op, as condominiums, or as rentals. Some are a combination of these where tenant associations own a small percentage of the rental building.

The large majority of tenant groups that seek to purchase their building directly *and* receive funding assistance through DC's First Right Purchase program develop as limited equity co-operatives (or co-op).[4] In a co-op, tenants own shares of, or hold membership in, a corporation that in turn owns the building. Unlike a condominium, tenants do not own their individual units. In a limited equity co-op, tenants get the tax benefits available to homeowners, but they accept restrictions on the future resale of their share. Unlike in a market rate co-op, where tenants can sell their share at whatever price the market will bear, tenants selling shares of a limited equity co-op must sell the share at an affordable price to low- and moderate-income residents. These affordability restrictions typically last for 40 years, which is a requirement of projects when utilizing funds from DC's Housing Production Trust Fund — the main source for First Right Purchase assistance.

Figure 1

Tenant Purchase Supports Affordable Housing for a Range of Low- and Moderate-Incomes

Affordability of Units Supported by Select First Right Purchase Projects by Area Median Income (AMI)



Source: DCFPI Analysis of data obtained from the DC Department of Housing and Community Development and organizations with knowledge of projects. Projects are included if an AMI breakdown was available. Most units included in this chart are ones supported after FY 2007 because DHCD was not able to provide breakdowns by AMI prior to that date.

Many tenants choose to develop as a limited-equity co-op because the initial price for membership into the co-op is very low and because the limited-equity co-op is able to obtain the loan to purchase the building. This means that an individual household's credit is not a factor as it is a single-family home or condominium purchase. Monthly charges that tenants are required to pay are then kept lower than market rate co-ops through subsidies, usually a subsidized loan from the Housing Production Trust Fund, obtained by the tenant association.

DC's First Right Purchase Program Has Several Benefits

- **First Right Purchase Is One of DC's Key Anti-Displacement Tools for Low- and Moderate-Income Residents.** The First Right Purchase program allows tenants to stay in their building and maintain housing that is affordable to them, even as the neighborhood develops and housing prices rise around them.

- **First Right Purchase Preserves Affordability in Neighborhoods.** DC-supported tenant purchase projects since 2008[5] have preserved affordable housing for a range of low- and moderate-income families, from as low as 30 percent of area median income ($32,250 for a

[4] For a more detailed look at limited equity co-ops see: Policy Link, "Limited Equity Co-Op," available at: http://www.policylink.org/site/c.lkIXLbMNJrE/b.5137049/k.A9DF/Limited_Equity_Housing_Coop.htm
[5] DHCD was not able to provide a breakdown of the units by AMI for all years, most figures are from loans made after FY 2007.

family of 4) up to 80 percent of area median income ($70,250 for a family of four.) (See **Figure 1**.) Most buildings that receive funding from DC's First Right Purchase program remain affordable for 40 years.

Importantly, First Right Purchase helps preserve affordable housing in the tenants' current neighborhood—even as the neighborhood develops and grows. For example, within the Columbia Heights/Mt. Pleasant/Park View/Pleasant Plans neighborhood cluster, a neighborhood cluster that has seen significant growth in population, amenities and housing prices over the last decade, has 14 First Right Purchase projects that were supported by DHCD between FY 2002 and FY 2013. These projects have helped preserve nearly 364 units of affordable housing.

- **First Right Purchase Provides Home Ownership Opportunities to Low- and Moderate-Income Residents.** For many low-income residents, First Right Purchase provides their first opportunity for home ownership. By forming as a group and pooling their resources, tenants who would not likely be eligible to purchase a home on their own can get access to financing and buy into a co-operative or condominium at a much lower cost than buying a single family home, yet still get the tax benefits and opportunities to gain equity that homeowners enjoy.

A Closer Look at First Right Purchase in DC: 1417 N Street Cooperative Association

The 1417 N Street Cooperative Association is located in the Logan Circle neighborhood in DC's Ward 2. The building consists of 84 housing units which the tenants purchased in July 2011 with help from DCHD's First Right Purchase program.

Prior to purchase, the tenants had been faced with poor living conditions--including rodents, leaks, and mold. When faced with their building being converted to condominiums and realizing that many of the current residents would no longer be able to afford to live there, the tenants organized, formed a tenant association, and six years later purchased their building with technical assistance from the Latino Economic Development Center.

Since purchasing their building, the tenants have begun repairs and plan to do significant rehabilitation as well as add a childcare center. Because of the First Right Purchase program, The 1417 N Street Cooperative Association is still home to low- and moderate-income families and individuals in one of DC's more expensive neighborhoods.

For more information, visit: http://www.norwoodtenants.org/

- **First Right Purchase Provides Tenants with Control over Their Living Conditions.** Many tenants use the First Right Purchase program to make repairs that are neglected and leave them in unsafe living conditions. If developing a co-op or condominium, tenants elect a board from their own members to make decisions on the future of their home. If tenants keep the property as an affordable rental they can choose a developer or non-profit to work to help make the building into a better place to live.

- **First Right Purchase Can Be A Cost-Effective Preservation Tool.** The average development costs for First Right Purchase projects were just under $165,000 per unit, according to an analysis of some recent projects by members of the Coalition for Nonprofit Housing and Economic Development (CNHED). This is lower than other types of affordable housing development (i.e. single-family, rental developments, special needs housing, etc.) on a per-unit basis.[6]

CNHED's analysis notes however that First Right Purchase projects typically require a larger share of the development costs to come from DHCD. This, CNHED notes, is largely due to the fact that ownership projects typically cannot access Low-Income Housing Tax Credits (a federal affordable housing program) and that often the tenants have very low-incomes.[7] As a result, low-income tenants have difficulty obtaining private financing and usually need a larger share of the subsidy to come from DHCD in order to make the project viable.

The total development costs and amount of subsidy needed for any project will vary for a variety of factors, but with First Right Purchase projects the three largest factors are building location, the level of rehabilitation needed, and the incomes of the residents. Buildings located in areas where land values are higher will have higher acquisition costs and buildings that are in severe disrepair will often need more rehabilitation funding to make them livable. In addition, buildings with tenants with very low-incomes will require greater subsidy.

- **First Right Purchase Is a Loan Program that Is Repaid to DC Over Time.** First Right Purchase assistance is given in the form of a loan that is repaid to the District over a period of time. This means that the assistance given to residents can come back to DC and help re-build funds for affordable housing.

DCHD's First Right Purchase Program Has Helped to Preserve Nearly 1,400 units of Affordable Housing Since 2002

According to data from the District's Department of Housing and Community Development, the District has supported 49 different First Right Purchase projects since 2002 with approximately $130 million in investment — with funds largely from the Housing Production Trust Fund, Community Development Block Grant Funds and recently with Low-Income Housing Tax Credits.[8] This funding has preserved nearly 1,400 units of affordable housing in all but two wards of DC[9]. (See **Figure 2.**)

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[6] "Financing Affordable Housing in DC: An Analysis of Sources of Financing," Coalition for Nonprofit Housing and Economic Development, May 2012.

[7] Due to of a lack of DHCD funding in recent years several First Right Purchase projects have remained rental in order to access tax credits.

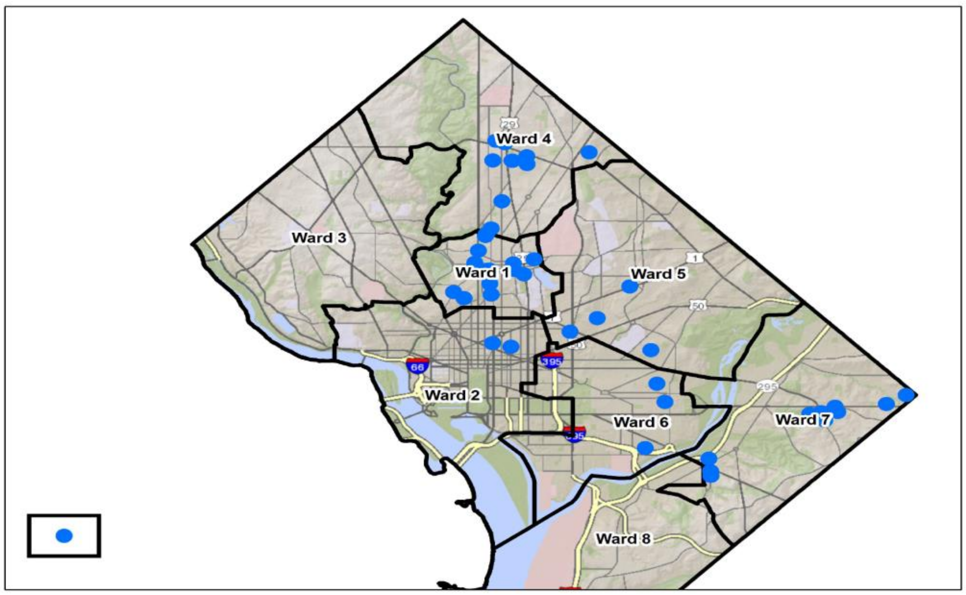
[8] DHCD provided seed money loans or earnest money deposits to four projects in FY 2008 that did not move forward with the tenant purchase process for reasons unknown. The program also supported one other project that it was not clear if these units were preserved because of the First Right Purchase program. DCFPI's analysis does not include these units in the total number of units preserved and only includes the funding in total loans and loan amounts given out by DHCD.

[9] First Right Purchase projects have been supported in wards 3 and 8 prior to FY 2002. However this analysis is limited to projects that received assistance through the program from FY 2002-FY 2013. It also does not mean that tenants did not exercise their rights to purchase but assigned their rights from the outset to a developer to preserve the housing. These projects are not typically included in the First Right Purchase program and so are not included in this analysis. However, three of the First Right projects DCFPI reviewed seemed to have developed with tenants assigning some or all rights to the developer so a small percentage are included in this analysis.

Figure 2

DC's First Right Purchase Program Has Helped Preserve Nearly 1,400 Affordable Units of Housing Across DC

Locations of Properties that Received Assistance from DC's First Right Purchase Program, FY 2002-FY 2013



Source: DCFPI analysis of data obtained from DC's Department of Housing and Community Development

The majority of the buildings supported by the First Right Purchase program are located in Wards 1 and 7, which had 437 and 397 affordable units preserved, respectively. (See **Table 1, next page**.)

Table 1 also shows the total investment from 2002-2013 in each ward and the average cost per unit. Citywide, the average public support has averaged about $97,900 per unit over the past decade.

As noted, the total development cost per unit will depend on a number of factors including location year of sale and how much rehabilitation the building needs. For example, the high per-unit cost in Ward 2 partially reflects the high price of land there. The amount of DHCD investment per-unit that will be required for the project will depend on the mix of tenant incomes. But total per-unit costs will also depend on what kind of assistance is given. For example, buildings that require both acquisition and rehabilitation funds could have a higher per unit cost than buildings that require acquisition alone.

The First Right Purchase program has been successful in preserving affordable housing in DC. Over the course of FY 2002-FY 2013, the program has supported 49 unique projects, of which 90 percent remain affordable.[10] Thirty four of the 49 projects remain in the same ownership structure as they began, either as limited equity co-ops (28 projects), affordable rental (three projects), affordable condominium (two projects) or affordable condo/limited equity co-operative mix (one project). Nine of the others had a change in ownership structure but remained affordable.[11] Four projects were awarded seed money only, but did not go on to develop as co-operatives.[12]

Table 1

DC's First Right Purchase Program Has Helped Preserve Nearly 1,400 Units of Affordable Housing

Ward	Projects	Units	Total DHCD Investment (in thousands)	Average Subsidy Per Unit (in thousands)
1	17	437	$46,500	$114
2	2	158	$26,940	$171
3	0	0	$0	$0
4	10	268	$20,880	$91
5	4	124	$9,070	$70
6	3	34	$3,970	$117
7	8	397	$23,470	$58
8	0	0	$0	$0
Total	45	1,391	$129,600	$97,900

Source: DCFPI analysis of data provided DC's Department of Housing and Community Development. Dollars are in thousands and adjusted for inflation to equal FY 2013 dollars. Per unit costs do not include units that were preserved using loan modifications or only got seed money which have no dollar value associated with them or minimal dollar amounts, respectively.

While the program has, overall, been very successful at preserving affordable housing there have been instances where projects changed and tenants sold their buildings. Among the projects supported by DHCD between FY 2002 and FY 2013, one group did sell their building—although it remains affordable housing—and another group is planning to sell, in part, because of difficulties in securing rehabilitation funds.[13] It is likely though that this project will also remain affordable, according to those working with the project.

There have also been instances where tenant groups went through DHCD to try and purchase their building, but not the First Right Purchase Program according to DHCD, and faced significant challenges that put their building at risk. For example, one group of tenants, living at the Randolph

[10] Some of the current ownership status came from 2011 research from Amanda Huron's dissertation, "The Work of the Urban Commons: Limited-Equity Cooperatives in Washington, D.C." Amanda received her PhD in geography from the Graduate Center of the City University of New York in 2012. Contact Jenny Reed (reed@dcfpi.org) to be put in touch with Amanda Huron. The remaining statuses were confirmed by talking with organizations that had knowledge of the projects' status. Please contact Jenny Reed (reed@dcfpi.org) for further information.

[11] Eight of the projects changed from a limited equity co-op to affordable rentals, because it allowed them to seek federal low-income housing tax credits or other federal funds to fund rehabilitation. One project converted from a limited equity co-op to affordable condominiums.

[12] Three of those projects developed as affordable rentals, and one developed as market-rate condominiums.

[13] One project was awarded acquisition funds in FY 2002 as developed as a co-op but the tenants later sold the building. Currently, the building is owned by a group that operates the building as affordable rental for people with a mental illness. Available data do not identify who owned the building between the time the tenants sold the building and the time the current owners bought the building (also with help from another DHCD program). This means it is not clear if the tenant purchase process or First Right Purchase program aided the building in remaining affordable today.

Towers property, tried to purchase their building and used funds from DHCD's Home Purchase Assistance Program (HPAP) to help subsidize the affordable homeownership and acquisition of their building. However, for a variety of reasons — the housing market crash, a change in DHCD HPAP policies mid-purchase, confusion among tenants, and slow responses from DHCD to address the issues — the purchase was threatened and the building nearly went into foreclosure. Currently, the building is working with several entities, including DHCD, but its status is unknown and it is unclear what may happen to the tenants, some of which have decided to move out.[14]

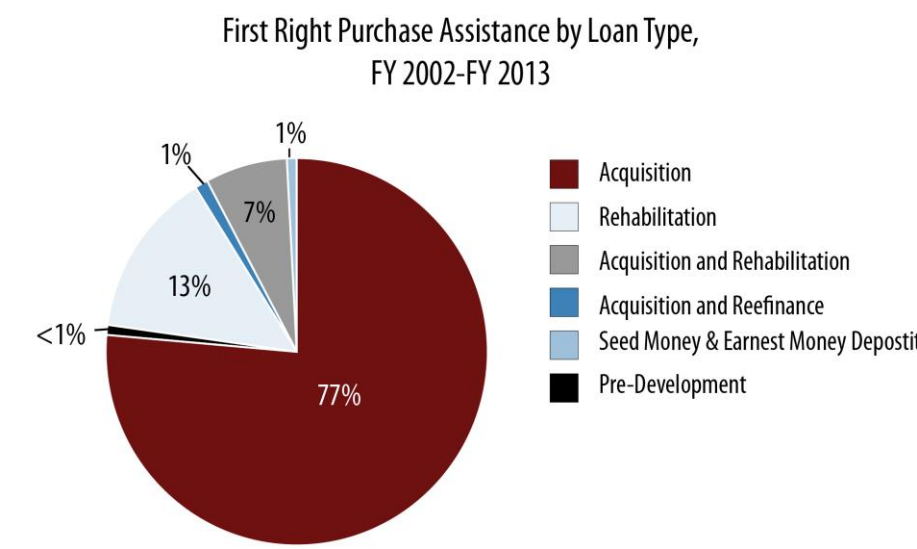
A similar situation occurred at a building called Mayfair Mansions where the project was split into affordable rentals and affordable condos. The condo portion of the building did not move forward and ultimately went into foreclosure.[15] It would be useful for DHCD to pinpoint precisely what went wrong when these tenants tried to purchase their buildings going through other DHCD programs so as not try and avoid these types of poor outcomes going forward.

The Majority of First Right Purchase Assistance Comes from DC's Housing Production Trust Fund and Is Used for Acquisition

The majority of First Right Purchase assistance from DHCD since FY 2002 — $100 million of $130 million — has been in the form of acquisition loans. (See **Figure 3**.) Acquisition loans make up nearly half of the 80 loans DHCD has given for First Right Purchase since FY 2002. The second largest use of these loans — 13 percent of the loan volume over the past decade — has been for rehabilitation.

Figure 3

The Majority of Tenant Purchase Assistance is Given Out Through Acquisition Loans



Source: DCFPI Analysis of data obtained from the DC Department of Housing and Community Development

The District also has issued 17 First Right

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[14] For more history on the Randolph Towers building, see: Lydia DePillis, "Randolph Towers Heading to Foreclosure," Washington City Paper, March 8, 2011, available at: http://www.washingtoncitypaper.com/blogs/housingcomplex/2011/03/18/randolph-towers-heading-towards-foreclosure/.

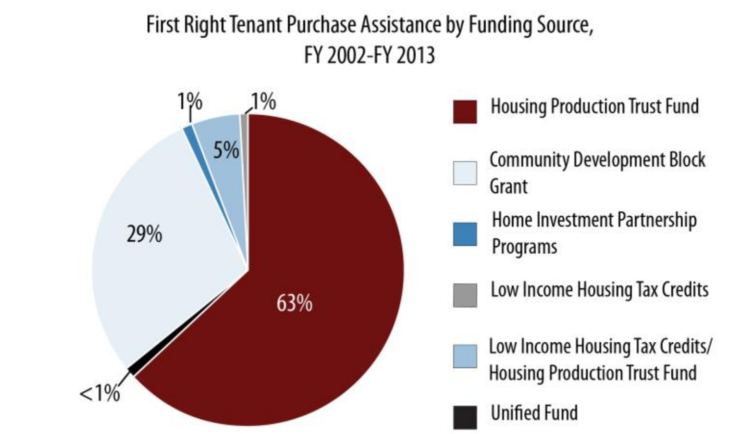
[15] See: Lydia DePillis, "Another City-Supported Tenant Purchase Goes Under," Washington City Paper, August 31, 2010, available at: http://www.washingtoncitypaper.com/blogs/housingcomplex/2010/08/31/another-city-supported-tenant-purchase-goes-under/.

Purchase loans for seed money since FY 2002. Yet, because they are typically far smaller than acquisition loans, seed money loans make up less than 1 percent of the total assistance.

DC's Housing Production Trust Fund is the major source of funding for First Right Purchase, accounting for nearly 63 percent of the total investment since 2002 (**see Figure 4**). DC's Community Development Block Grant also has provided significant support for First Right Purchase, accounting for 29 percent of total investment. Low-Income Housing Tax Credits (LIHTC's) accounted for a significant portion of First Right Purchase support in the last few years, as funding for both the HPTF and CDBG programs fell significantly. The projects that have utilized LIHTC's have largely done so in order to be able to secure rehabilitation funding.[16]

Figure 4

The Majority of First Right Purchase Program Assistance Comes from DC's Housing Production Trust Fund



Source: DCFPI Analysis of data obtained from the DC Department of Housing and Community Development.

Over 5,000 DC Housing Units Went Up For Sale in FY 2012 and Could Potentially Have Been Supported by First Right Purchase

A key element of First Right Purchase is that it can prevent displacement. Over 5,000 units of housing went up for sale across 99 buildings in every ward in DC in fiscal year 2012, and by law tenants had the first right to purchase them. (See **Figure 5**.) Ward 2 and Ward 6

Table 2

In FY 2012, Over 5,000 Rental Units in Multi-Family Buildings Went Up For Sale in DC

Ward	Number of Buildings	Number of Housing Units
1	16	1,060
2	11	1,075
3	3	121
4	14	514
5	9	78
6	12	1,536
7	16	222
8	18	558
TOTAL	99	5,164

Source: DCFPI analysis of data obtained from DC's Department of Housing and Community Development

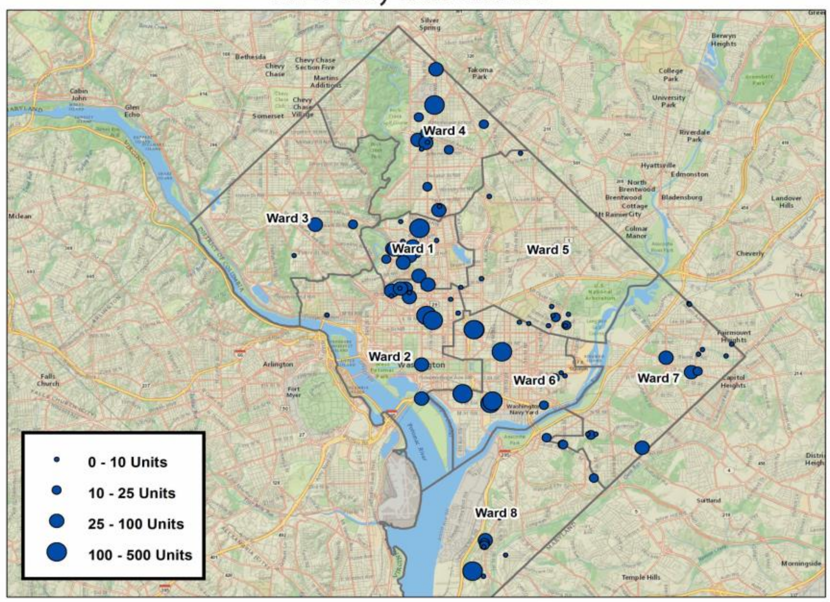
[16] In order to utilize LIHTC funding the coops must first sell their building, or assign their rights, to an investment partnership. In some cases the co-op may participate in the partnership. This is because the investors in the tax credits are the owners of the property and therefore the building must be operated as a rental property. The level of involvement of the coops in decision-making varies greatly between partnerships. In many instances the partnership and co-op agree up front to terms under which the coop will be able to buy back the building once the credits have expired, usually in 15 years, at the initial acquisition price. However the tenants are no longer owners during this time period and may still need to acquire acquisition funding to buy the building back, although the purchase price at that point is usually at a substantial discount.

had the highest number of units put up for sale with approximately 1,075 units and 1,536 units, respectively. (See **Table 2.**)

Figure 5

Over 5,000 Housing Units Went Up for Sale in DC in FY2012

Locations of Multi-Family Buildings (5+ units) Up for Sale in FY 2012 by Total Unit Size



Source: DCFPI analysis of data obtained from DC's Department of Housing and Community Development

At least 45 groups of residents formed tenant associations and filed with DC's Rental Housing Commission — an indication that they intend to consider purchasing their building. Yet current resources for First Right Purchase assistance are not adequate to meet this high demand, even if some of the groups ultimately stop pursuing a purchase. This could potentially lead to the loss of a significant amount of low- and moderate-cost housing.

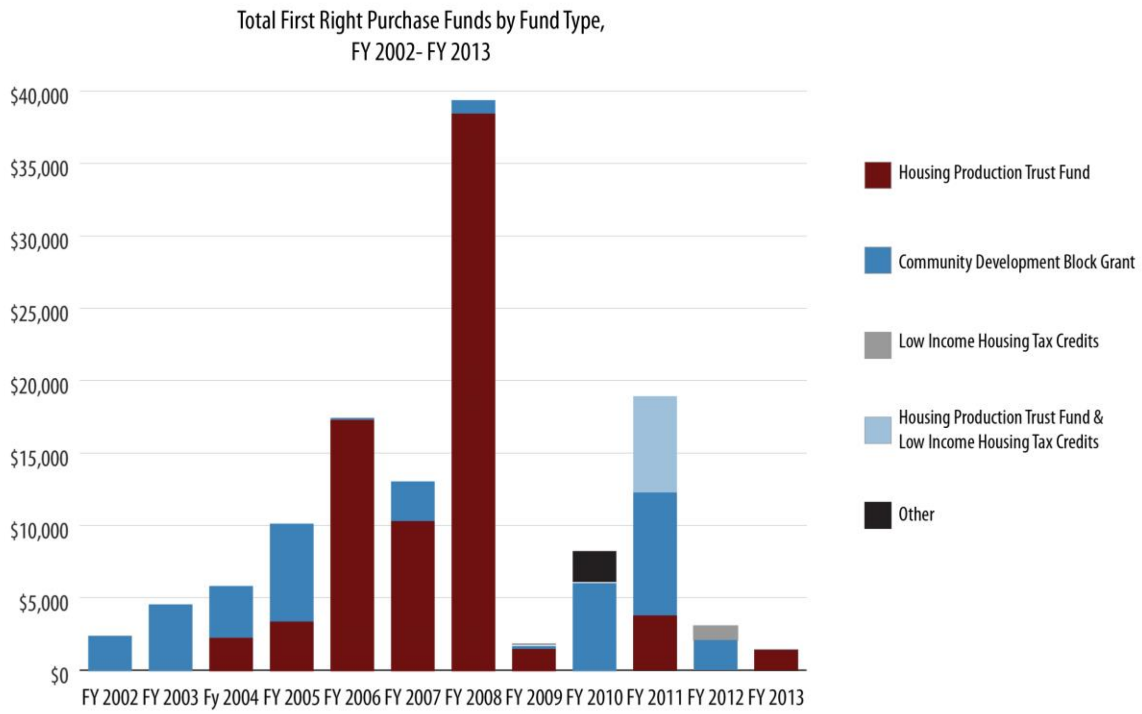
As noted, the majority of funds for First Right Purchase come from the Housing Production Trust Fund and Community Development Block Grant (CDBG), both of which have seen significant cutbacks in recent years, particularly in the wake of the recession. Total funding for First Right Purchase reached a peak of approximately $39 million in FY 2008 with the majority of funds coming from the HPTF and some from the CDBG. Funding then fell dramatically in FY 2009, to just $1.8 million. (See **Figure 6, next page**.) Funding began to climb in 2010 and 2011, but then fell again in FY 2012 and FY 2013. The resources from these pots that are made available for First Right Purchase depend on DHCD discretion, the projects requesting funds, and other types of affordable housing projects that are competing for the same resources.

The reduction in funds available for First Right Purchase has led to a cutback in the number of housing units preserved through this program. While a high of 292 net new units were supported in FY 2008, the total dropped significantly in FY 2009 and now stand at 35 for FY 2012 and 28 for FY 2013.[17] (See **Figure 7, page 13**.)

[17] While several projects had been supported in FY 2012, they had previously been supported in prior years and could not be counted as net new.

Figure 6

Funding For First Right Purchase Has Declined in Recent Years



Source: DCFPI Analysis of data obtained from the DC Department of Housing and Community Development
Numbers in thousands and adjusted for inflation to equal FY 2013 dollars.

Ensuring the Viability and Long-Term Success of First Right Purchase Projects Should Be a High Priority for the District

Because of the great benefits the First Right Purchase program offers, ensuring the viability of the First Right Purchase program and long-term success of tenant purchased buildings should be a high priority for the District. The following section provides recommendations to address a number of challenges tenants can face in acquiring their building. This includes: the timely availability of funds, limits on the amount of assistance per unit and limits on how funds can be used. It also includes recommendations on greater assistance and oversight of projects *after* the building has been purchased and the job of the tenants turns to an equally challenging task —managing their buildings.

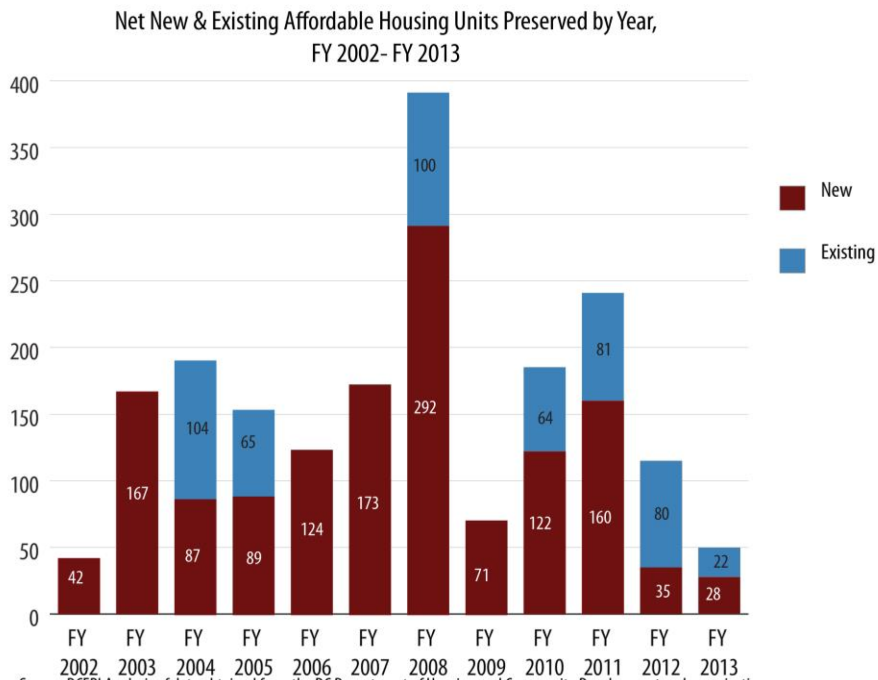
One area where this need becomes especially apparent is that several of the co-op buildings are not in compliance with DC's paperwork requirements, meaning they have not submitted documents such as annual audits and tax returns in a timely manner. This is partly due to the fact that the rules have not been rigorously enforced by DHCD until recently. The lack of compliance may also reflect tenant groups that are not aware of the types of documents that are required, tenant groups that have not submitted updated contact information to DHCD, tenant groups that haven't submitted documents, and document requirements that may be too onerous for tenants of smaller buildings.

Low compliance with paperwork requirements does not mean that co-operatives are not working, but it does make it difficult to assess their current strength and financial viability. DHCD is in the process of ensuring all co-operatives move into compliance, including working with community-based organizations that provide technical assistance to co-operatives.

The following recommendations address ways the District could make the First Right Purchase program more effective for tenants trying to buy or renovate their buildings.

Figure 6

After a Spike in 2008, Net New Affordable Housing Units Preserved with Tenant Purchase Between 2002-2013 Have Fallen



Source: DCFPI Analysis of data obtained from the DC Department of Housing and Community Development and organizations with knowledge of projects

In particular, the District should:

- Increase funding to make more First Right Purchases possible;
- Make it easier for tenant groups to get needed funds quickly for initial stages of a purchase;
- Enhance the funding available per project and increase funds available for capital needs;
- Streamline the process for underwriting and approving First Right Purchases; and
- Provide additional assistance to tenant groups that have purchased their buildings.

The recommendations do not focus on the Tenant Opportunity to Purchase (TOPA) law itself and the process that tenants go through under TOPA while purchasing the building. Issues around the TOPA process, and recommendations for strengthening it, have been addressed in other policy briefs.[18] It would be worthwhile for DC to revisit and evaluate those process recommendations.

[18] See: "A Study of Limited-equity Cooperatives in the District of Columbia," Coalition for Non-Profit Housing and Economic Development, available at www.cnhed.org & "An Analysis of the Strengths and Deficiencies of Washington, D.C.'s Tenant Opportunity to Purchase Act," Harrison Institute for Public Law, Georgetown University Law Center, available at: http://content.knowledgeplex.org/kp2/cache/documents/1834/183436.pdf.

Policy Recommendations

Increase Funding to Make More First Right Purchases Possible

Without additional funds for the First Right Purchase program, many low- and moderate-income tenant groups will not be able to fully exercise their right to purchase their building under DC's Tenant Opportunity to Purchase Act. The main sources of funding for First Right Purchase — the Housing Production Trust Fund and Community Development Block Grant — had both been cut back in recent years leaving fewer resources for the First Right Purchase program. However, DC's HPTF recently received a significant boost in funding which has the potential to make more First Right Purchase projects possible.

Currently, DCHD has a target of funding 100 First Right Purchase units per year. Yet with 45 tenant associations filing in FY 2012 alone, and representing more than 1,000 units, the goal of 100 a year is too low to meet the need. DHCD should increase its target funding to 300 units per year of First Right Purchase units.

Make It Easier for Tenant Groups to Get Needed Funds Quickly for Initial Stages of a Purchase

- **Develop a process to help tenant groups get temporary loans with short turnaround time.** First Right Purchase projects happen throughout the year and are on tight timeframes. In some cases, tenants need access to funds quickly, through something known as a "bridge loan," while they work to line up permanent financing. The District has such a process — the Site Acquisition Funding Initiative — to help eligible non-profit developers with bridge financing, but First Right Purchase groups are not eligible for these funds. The District could look to expand this program to tenant associations.

- **Improve the turnaround time for seed money applications.** There are several different types of financing that can be requested by tenants from DHCD as part of the First Right Purchase process, but a common first step is getting seed money for an application, which is needed to do an initial analysis of the development. Currently, DHCD's process to review seed money applications can take as long as the typical review for an acquisition loan. Since seed money is needed to get the development process kick-started, the applications should not take more than 45 days for turnaround.

Enhance the Funding Available Per Project and Make More Funds Available for Capital Needs

- **Allow for DC financing to cover a larger share of the costs of a First Right Purchase project.** Currently, DHCD has a ceiling in place that no more than 49 percent of a First Right Purchase project's total development costs can come from funding from DHCD. While DHCD has discretion to go above the 49 percent limit on a case by case basis — and has shown some willingness to consider adjusting the ceiling — this limit often is not workable and should be removed as a rule. This is especially important for purchases of smaller buildings, because it is more difficult to get private financing or Low-Income Housing Tax Credits on buildings with fewer units.

In addition, buildings with tenants who have very low-incomes or buildings that need substantial renovation often need to access a greater amount of low-cost financing, because private financing costs would lead to rents that tenants could not afford. In fact, CNHED's analysis of some recent member projects showed that the average First Right Purchase project had about 72 percent of total development costs come from DC financing sources. This means that for the typical First Right Purchase project, a 49 percent ceiling would not be workable.

- **Increase the amount of assistance available per unit for First Right Purchase projects.** In prior years, DHCD had a $95,000 per unit ceiling on the amount it would provide toward the development costs for First Right Purchase projects. But, this is too low in many cases. CNHED's analysis of recent First Right Purchase projects showed that the average per unit development cost — including both public and private resources — was $165,000. If a tenant group is seeking funds for both acquisition and renovation of the building, it may need more than $95,000 per unit in public financing assistance.

- **Make more funds available for renovation of First Right Purchase buildings.** The majority of funds for First Right Purchase are devoted to acquisition. Yet buildings often need renovation, sometimes at substantial levels, in order to remain safe, decent, and affordable. DHCD should consider having a separate pool of First Right Purchase funds set aside for renovations or allow tenant groups to apply for both acquisition and rehabilitation funds at the same time. This additional investment in renovation can help ensure that investments in buildings stay sound in the long-run.

- **Allow First Right Purchase Funds to be used for emergency-type repairs.** In many instances, tenant groups are purchasing buildings that are in significant disrepair. While the tenant group may not be at a point where they are ready for a larger renovation; there may be some repairs that are needed within the first year such as roof repair or replacement, heating/cooling system repair, or major systems issues. Allowing First Right Purchase funds to be used for these emergency repairs can help ensure tenants can fix basic safety problems at the onset of the purchase.

- **Improve the transparency of funds for First Right Purchase.** It is often difficult to determine how much funding is available at a given time from sources like the Housing Production Trust Fund (HPTF) or Community Development Block Grant (CDBG), for First Right Purchase projects. Matching the TOPA timeline requires that DHCD have funding available for seed money and First Right Purchase throughout the calendar year, and that the agency knows how much money is available at any given time.

  Real-time quarterly estimates should be posted on DHCD's website to help improve the transparency of the funds available. In addition, tenant groups should be able to call and inquire how much funding is available so prospective tenant groups and developers could check to see if HPTF, CDBG, or other types of funding are available so that they could determine if they wanted to move forward on a First Right Purchase project with financing from DHCD. The lack of transparency has led to a decrease in applications in years past as development consultants assume funds are not available, when in some cases there is money in the Trust Fund.

Streamline the Process for Underwriting and Approving First Right Purchase Projects

- **Tie application review process and timeline more closely to the tenant opportunity to purchase process.** The steps in First Right Purchase are tightly tied to specific timeframes set by the Tenant Opportunity to Purchase Act. For example, tenant associations have 120 days to finalize a sales contract after they have registered their intent to purchase (although extensions are possible in some cases). It would be helpful to applicants if DHCD completed its review of First Right Purchase applications in a timely manner so that tenants could meet their legal deadlines. Some ways that the review of the application could be completed in a more timely manner include:

    1. Begin the application review process while some required studies are pending. Tenant associations typically do not have funds to obtain appraisals, environmental and other studies early in the process. Until quick access to funds is available through DHCD or other sources, DHCD should begin the underwriting process while awaiting these studies.

    2. Revise the application form for easier underwriting. Tenant purchase applications do not often include a request for construction funding but the DHCD application form makes it difficult to distinguish between the acquisition and construction phase of the purchase. The application should provide enough information so that underwriting can consider the feasibility of construction financing in the future; however, there should be clear demarcation between the two phases.

    3. Waive requirements not applicable to First Right Purchase. Borrowers and DHCD staff should be clear that First Right Purchase projects can receive waivers for non-applicable requirements. For example, a market study in cases where the goal is to preserve affordability and the projected monthly charges are significantly below market.

- **Set other key benchmarks in the application process.** DHCD should also establish reasonable benchmarks for the other key benchmarks in the review, loan committee review, Director sign-off on Loan Committee review, commitment letter, and application review by the DC Council. These benchmarks can help tenant groups have reasonable timeframes for expected decisions in the application process.

Enhance Access to Assistance for First Right Purchase Projects After They Have Acquired Their Building

DHCD should provide increased technical assistance and oversight to ensure that the community-controlled housing is sustainable for the long term. One way to achieve this is to expand the existing technical assistance network and/or increase the type of technical assistance that is provided.

- **DHCD should regularly assess co-ops to catch problems before they become hard to fix.** While many co-ops have been able to sustain, the current strength and financial health of many co-operatives is unclear because several buildings are not in compliance with DHCD paperwork filing requirements. A regular assessment, something that DHCD has had but has only more recently started to enforce in the past few years, of completed First Right Purchase projects can help DHCD ensure that significant problems are addressed as early as possible to avoid loss of the co-op. The assessment could look at the financial strength and status of any capital improvements that need to be made and ensure that there is a plan to do so. If problems arise, DHCD could work to remedy any problems.

- **Help tenant groups access technical assistance after the tenant opportunity to purchase process is done.** There is less emphasis on technical assistance available for tenant groups after the acquisition process is complete. Yet resident groups must maintain their buildings, including renovations, and must comply with DHCD's loan reporting requirements and DC's corporate reporting and registration requirements, which can be tough to navigate. During the process of awarding or reviewing loans, DHCD should match co-operatives with technical service providers and require that the relationship is maintained while they are paying back DC funds. DC could also require co-op board members to attend training — a practice that New York City uses.

  Technical assistance could help groups manage challenges that arise after the deals are complete, such as determining what are appropriate carrying charges—the monthly fees paid by residents to the co-operative to pay the mortgage, common utilities, management, maintenance, building overhead, and deposits to replacement reserves — used by the co-operative to fund capital improvements. Providers could also help co-ops ensure that they are in compliance with DHCD by filing documents in a timely manner. By providing ongoing technical assistance, providers can be the link between the co-op and DHCD and/or the private lender, helping to address problems at the onset, before they become more serious. DHCD should survey existing tenant groups that have received funds to find out what kinds of assistance or training they may need.