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SUBMITTED TO THE COMMITTEE ON CONSUMER & REGULATORY AFFAIRS
OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

IN CONNECTION WITH

PUBLIC ROUNDTABLE ON BILL 16-556, THE "TENANT EVICTIONS
AMENDMENT ACT OF 2005"

JANUARY 24, 2006

CHAIRPERSON GRAHAM AND MEMBERS OF THE COMMITTEE:

My name is Jonathan K. Tycko, and I am a partner with the law firm of Tycko, Zavareei & Spiva LLP. That you for this opportunity to address the Committee on the important issue of reform of Section 501(f) of the Rental Housing Act, current codified at D.C. Code § 42-3505.01(f).

My law firm is actively involved in representing tenants and tenants' associations in various matters under both the Rental Housing Act and the Rental Housing Conversion And Sale Act. I have represented tenants who have been directly affected by what I perceived to be abuses of Section 501(f). Although Section 501(f) serves a legitimate *substantive* policy goal – to allow housing providers to temporarily remove tenants from a unit when that unit is in need of renovations that cannot safely be accomplished with the unit occupied – it has been *procedurally* abused. The previous Rent Administrator had approved the issuance of notices to vacate under Section 501(f) based solely upon informal requests from the housing providers, without any notice to or input from the tenants, and without any real analysis of whether the evictions were truly necessary.

I believe that the general approach taken in Bill 16-556 is correct. That Bill retains the current substantive standard, stating that a housing provider "may recover possession of a rental unit for the immediate purpose of making alterations or renovations to the rental unit with cannot safely or reasonably be accomplished while the rental unit is occupied." But the Bill amends the existing law to require that certain specific procedures be followed, both before the Rent Administrator approves the notices to vacate, and also after the unit is vacated. These procedures will help assure that tenants are forced from their units under Section 501(f) only when truly necessary, and will also help assure that housing providers are then held accountable for actually making the alternations or renovations in a timely fashion.

I would like to offer two suggestions with respect to the language of Bill 16-556. Those suggestions relate to the following issues:

1. Assuring that tenants have an opportunity to be heard by the Rent Administrator before the Rent Administrator makes a determination under Section 501(f); and

2. Assuring that evictions under Section 501(f) are not used to undermine tenants' rights under the Rental Housing Conversion And Sale Act;

I will briefly address each of those issues in turn.

1. Additional Language Should Be Added To Assure That Tenants Have An Opportunity To Be Heard Before The Rent Administrator Makes A Determination Under Section 501(f)

The current version of Bill 16-556 provides that the tenants must receive notice when a housing provider applies to the Rent Administrator under Section 501(f). The current version, however, does not explicitly provide that the tenants have a right to respond to the housing provider's application. Thus, the current version is ambiguous on a key procedural point. The current version could be read to permit the Rent Administrator to "approve" a Section 501(f) application the same day it is submitted by the housing provider, so long as the tenants received the required notice the day before. That is precisely the type of procedural abuse that, I believe, the Bill is intended to prohibit.

Accordingly, I would suggest two changes to the Bill. First, the Bill should set forth a minimum period of time that must elapse between when the housing provider files the application with the Rent Administrator, and when the Rent Administrator acts on the application. (I believe a minimum of 21 days would be reasonable.)

Second, the Bill should require that the housing provider's notice to the tenants also inform the tenants of their right to respond to the application during that period of time.

It should be kept in mind that Section 501(f) is <u>not</u> intended to deal with emergency situations. Section 501(f) merely permits a housing provider to evict upon 120-days notice. So, the addition of a short, specific period of time within which the tenants are assured that they can be heard does not impose any substantial additional burden on the housing provider. And it will assure that the procedural abuses of Section 501(f) that have been seen in recent times are not repeated.

2. Additional Language Should Be Added That Explicitly Preserves Tenants' Rights Under The Rental Housing Conversion & Sale Act

The Rental Housing Conversion And Sale Act (currently codified at D.C. Code §§ 42-3401.01 *et seq*.) provides tenants of a housing accommodation with various rights when the owner of the accommodation either seeks to convert the accommodation into a condominium, or seeks to sell the accommodation. For tenants, these are extremely valuable and important rights.

The current version of Bill 16-556 does not address what happens to a tenant's rights under the Rental Housing Conversion And Sale Act during the period of "temporary eviction" under Section 501(f). Under The Rental Housing Conversion And Sale Act, a "tenant" is defined as a person "entitled to the possession, occupancy or benefits of a rental unit with a housing accommodation." Thus, if a person is evicted under Section 501(f) – and the owner then seeks to convert or sell the accommodation prior to when that person returns to the unit – the question would arise as to whether that person is "entitled to the possession, occupancy or benefits" of the unit.

I would suggest that language be added to Bill 16-556 clarifying this issue. Specifically, a tenant that vacates or is evicted from a unit under Section 501(f) should continue to be considered a "tenant" for purposes of the Rental Housing Conversion And Sale Act during the period between: (a) the date the tenant vacates or is evicted from the unit, and (b) a date 30 days after the date on which the housing provider delivers to the tenant a written offer to re-rent the unit, or makes reasonable efforts to do so.

I believe that this is a crucial change to make to Bill 16-556. In my view, many of the abuses of Section 501(f) that were seen in recent times were the result of housing providers attempting to "empty" apartment buildings specifically with the goal of subsequently selling or converting the buildings. In other words, the housing providers were attempting to use Section 501(f) as a means to circumvent the requirements of the Rental Housing Conversion And Sale Act, and undoubtedly would have taken the position that a tenant evicted under Section 501(f) was no longer a "tenant" entitled to rights under the Rental Housing Conversion And Sale Act. Accordingly, adding language to Bill 16-556 that explicitly preserves a tenant's rights under the Rental Housing Conversion And Sale Act during the period of "temporary eviction" under Section 501(f) would help put a stop to that abusive tactic.

The Rental Housing Act already contains a precedent for this. The provision now codified at D.C. Code § 42-3505.01(n) addresses emergency situations in which tenants are barred from their units via "placarding" by DCRA. That provision states that, under those circumstances, "the tenancy shall not be deemed terminated until the unit has been offered for reoccupation to the tenant after the date that physical occupancy ceased." The "placarding" provision is very analogous to Section 501(f) because both address situations in which a tenant is removed from his or her unit solely because of physical problems with the unit or housing accommodation.

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I thank the Chairperson and the members of the Committee for their consideration of my statement.