A LOOMING CRISIS

The Residual Impacts of the COVID-19 Pandemic on Rent-Controlled and Market Rate Affordable Rental Housing in the District of Columbia

Prepared by the Apartment and Office Building Association of Metropolitan Washington

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Executive Summary

The COVID-19 pandemic wrought havoc on every aspect of the American experience. The unprecedented market disruption brought about by the associated business shutdowns and the reopening protocols that followed reverberated across every economic sector. This impact been particularly acute and enduring in rental housing.

Rental housing providers were battered with soaring delinquencies, skyrocketing operating costs, supply chain challenges, regulatory compliance costs, and essential workforce shortages. Policies were quickly implemented at all levels of government to protect against a mass wave of tenant displacement in the midst of a public health emergency. However, financial resources diverted to this cause failed to adequately cover the broad scope of need for rental assistance. Eviction moratoria and the resulting court backlogs that still persist today continue to drive historically high levels of uncollectible debt and threaten the very viability of many rental housing communities.

Just as the pandemic was regressive in its outcomes along economic lines, hardest hit within the rental housing industry were those properties serving lower levels of area median income. Many providers of these properties, which include government subsidized, unsubsidized, and rent-controlled units, still face mounting hardship today stemming from the pandemic and the unsustainable carryover delinquencies that continue to accrue.

The wave of foreclosures among multifamily properties has already begun. Other communities now teeter on the brink of insolvency, the District faces a crisis that may pose devastating consequences for renters, housing providers, and the District's already austere budget.

In this white paper, we examine the enduring impacts of the COVID-19 pandemic on rental housing in the District of Columbia, with a particular focus on subsidized, unsubsidized, and rent controlled properties with rents below market rate. The case studies and data included within spotlight the depth and scope of continuing challenges for these housing providers as well as the potential ramifications for the District and policy approaches to avoiding loss of this crucial segment of our housing stock. Among the key facts and findings generated by this research:

The District Suffers from a Dearth of Affordable Housing Supply

- Roughly 400,000 DC residents (roughly 58.6% of the total population) rent their homes. Of that population, nearly half are housing cost-burdened, with more than 30% of their income dedicated to housing. One in four are severely housing cost-burdened, with more than 50% of their income going towards housing costs.

- Area median income (AMI) for the District of Columbia rose in 2022 to $101,722 according to the U.S. Census Bureau. This means that the target affordability range for a household making 100% of AMI is approximately $2,143 after adding in utility costs. The median asking rent per unit in DC is currently $2,196, already higher than what is considered affordable. This creates a significant challenge for DC residents making less than $101,722 per year to find affordable housing, particularly for households requiring larger units.

- The District has met and even exceeded its new housing production goals in the last few years. Yet, groups like the Urban Institute and the Housing Association of Nonprofit Developers (HAND) cite that affordable housing construction has lagged behind demand. Now, as the low interest rates and abundant financing that drove the building boom have dried up, experts anticipate a sharp drop-off in new construction. This threatens to further exacerbate the supply/demand imbalance that drives our housing affordability challenges and heightens the imperative of maintaining our existing affordable housing stock.

Housing Providers Serving Less Affluent Renters Continue to Struggle with Serious Financial Hardship Stemming from the COVID-19 Pandemic

- The hyperinflationary conditions ushered in by the pandemic have driven up the costs of providing housing at a rate far beyond the Consumer Price Index (CPI) and other traditional measures. Many of the primary cost drivers for rental housing providers have seen double-digit increases in the last four years, representing a significant strain on the operations of these communities. Indeed, many affordable housing investors and small housing providers have already irretrievably divested from the DC market. Several more interviewed in the development of this white paper reported an unwillingness to invest in future projects because of the policy climate and inability to collect rent. Layered on top of this, rental housing providers have been hit with new costs associated with the surge in criminal activity in the District as well as regulatory compliance with mandates such as Building Energy Performance Standards (BEPS).

- Already restricted in their ability to recover those costs through rent increases, these housing providers have been further devastated by tenant delinquencies carrying over from the pandemic. Rental assistance funding has proven woefully inadequate to cover tenant delinquencies, and elongated court timelines (the legal process for regaining possession of a unit for non-payment of rent is currently taking at least 2-3 times as long as it did pre-pandemic) have contributed to individual arrearages in the tens of thousands of dollars, and cumulative losses in the tens of millions of dollars. Absent changes to District law regarding ERAP and the Court process, no amount of rental assistance funding will be enough to cover these arrearages.

- Many providers of affordable and rent-controlled housing have fully depleted their reserves over the last four years. These providers operate on razor-thin margins. Already faced with growing expenses and a challenging refinancing market, these cumulative losses could pose an existential threat to many communities that now find themselves faced with the very real prospect of not being able to meet their ongoing financial obligations and falling into foreclosure and bankruptcy.

The District of Columbia now faces a looming crisis as a critical segment of its housing sector teeters on the verge of financial insolvency. Carried delinquencies dating back to the outset of the pandemic continue to compound to the point that they threaten the very viability of many dedicated and market rate affordable and rent-controlled rental apartment communities. Without governmental intervention and action to alleviate the root causes of this precarious situation, the District will suffer diminished housing stock, a reduction in affordable housing options, displacement of vulnerable low-income residents, and an economic hit that will strip the city of valuable resources to support local schools, public safety, environmental initiatives and other critical programs.

To address this, we must first restore timely access to justice via the court system to allow housing providers to collect revenues for the service they continue to provide. We must also endeavor to assist those communities that face serious financial hardship by reducing expenses associated with regulatory burdens, drawing away scarce resources from the operation of rental housing and driving away new housing investment in the District.

The Critical Role of Dedicated and Market-Rate Affordable and Rent-Controlled Apartment Housing in the District

- What Constitutes Affordable Housing in DC?
- Anticipated Housing Demand vs. Supply
- The Universe of Rental Housing in the District
    - The Distribution of Rental Housing Across the District
    - The Composition of the District's Rental Housing Stock by Housing Types
    - The Proportion of Rent Controlled Units Among the District's Rental Housing Stock

What Constitutes Affordable Housing in DC?

The U.S. Census Bureau estimates that some 678,972 residents make their home in the District of Columbia.[1] Of that figure, 58.6% (roughly 398,000 DC residents) are renters.

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Affordable housing takes on many forms. The District itself owns or subsidizes a significant number of affordable housing units. According to the DC Policy Center, there are roughly 17,400 units across 487 distinct properties that either serve as public housing or which are owned by tax-exempt nonprofit operators.

"Market rate affordable housing" exists where the market naturally sets the rents at an affordable level. Sometimes referred to as "naturally occurring affordable housing," these are typically older, Class B/C properties. These are an essential part of the housing mix as they help to augment the supply of affordable housing without any required public investment of funding.

Many market rate affordable housing providers' business models are structured to provide this community benefit. However, it is important to recognize that they do not receive the same sorts of subsidies as dedicated affordable housing properties and pay significant taxes to which dedicated affordable housing properties are not subject. Preserving such housing requires a very careful balance. As costs soar and revenue collections wane, these properties will face significant pressure to hike rents or to redevelop and reposition to serve higher income renters.

Rent-controlled units additionally make up an important segment of the affordable housing picture in DC. As highlighted below, approximately 30% of the District's units fall under rent control. The DC Policy Center's research found that rent-controlled units typically have much lower rents than similarly sized uncontrolled rentals, especially in parts of the city where housing values have increased rapidly. But while the rent control law is intended to maintain housing affordability, rents vary greatly across the city and can exceed the targeted affordability ranges identified above. Additionally, the District's rent control policy does not employ means testing, meaning that there is no income eligibility restriction for who may take advantage of rent-controlled units. Often this means that residents at lower levels of area median income are frozen out of those units. Nevertheless, these units still represent a significant share of the District's affordable housing stock.

As identified by the Council of Governments (COG), the segment of our housing continuum that remains in scarcest supply is that which serves our most vulnerable residents; those who fall below 100% of the area median income.[2] Of the projected new housing supply needed, COG sets a target of 75% of those units to serve low- and middle-income households across the region, including within the District.

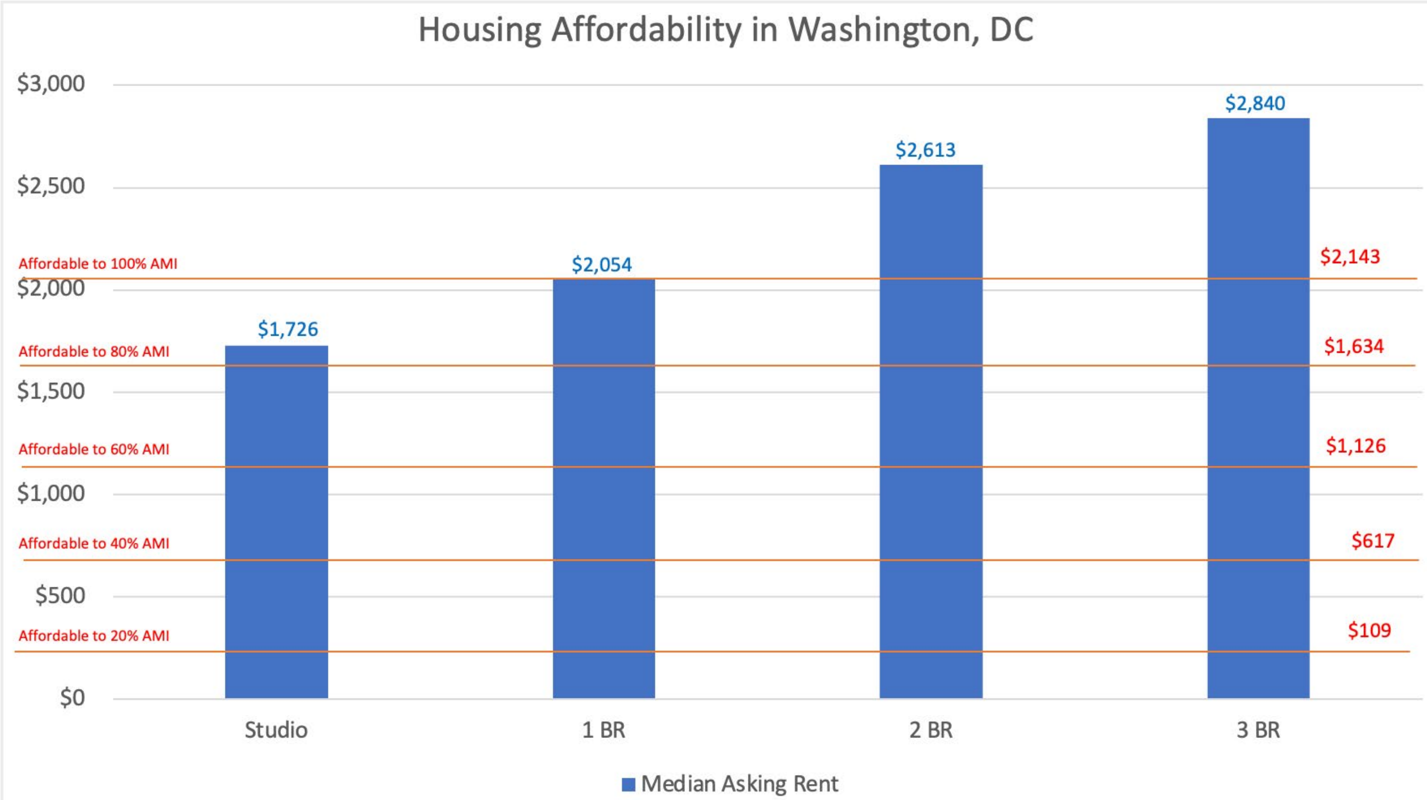
Most financial and budgeting experts point to the standard used by the U.S. Department of Housing and Urban Development (HUD) to determine affordability. The 30% rule stipulates that a household should spend no more than 30% of its gross income on housing costs. This includes not only rent, but also utility costs such as heat, water, and electricity. A household with housing costs exceeding 30% is considered to be housing cost-burdened. A household with housing costs exceeding 50% is considered to be severely housing cost-burdened.

Nearly half (47%) of DC renters fall under the category of housing cost burdened. 44,000 renter households (about one in four renters) paid more than 50% of their income to housing costs in 2022.

Nearly half (47%) of DC renters fall under the category of housing cost burdened, and according to a recent study by Uniting People with Opportunities (UPO), the number of DC residents who are severely housing cost-burdened has increased over the last decade.[3] According to their research:

- 44,000 renter households (about one in four renters) paid more than 50% of their income to housing costs in 2022, up from 36,000 in 2010.
- The overwhelming majority of renters who fall into the category of "severely housing cost-burdened" (about 40,000 renters) have incomes below $50,000.
- Roughly 65% of renter households with incomes below $50,000 were severely housing cost-burdened, up from 50% in 2014.

Area median income (AMI) for the District of Columbia rose in 2022 to $101,722 according to the U.S. Census Bureau. This means that the target affordability range for a household making 100% of AMI is approximately $2,143 after adding in



Most renter households below 100% of Median Family Income (MFI) are likely to be housing cost-burdened.

utility costs.[4] The median asking rent per unit in DC is currently $2,196, already higher than what is considered affordable. This creates a significant challenge for DC residents making less than $101,722 per year to find affordable housing, particularly for households requiring larger units.

Household size can also be a significant determining factor in the availability of affordable rental housing options. Larger households tend to have higher median family incomes. This works to their benefit. However, larger households have greater need of larger units. As depicted in the chart below, larger households that are closer to 100% of Median Family Income (MFI) are still likely to struggle finding 2- or 3-bedroom units that do not place them into the category of housing cost-burdened.

Those households shaded in red will fall into the category of housing cost-burdened for all unit sizes based on average market rents. Those shaded in yellow will be able to afford smaller unit sizes, but not larger units. For instance, a household of 8 people at 50% of the MFI may be able to afford a studio or a 1-bedroom apartment, but would likely require a larger unit that would put them into the category of housing cost-burdened. Only those households shaded in green are likely to be able to afford a variety of unit size options based on market

Housing Affordability Targets by Household Size/Family Income[5]						
Household Size	MFI	30% of MFI	50% of MFI	60% of MFI	80% of MFI	100% of MFI
1	$99,600	$447	$945	$1,194	$1,692	$2,190
2	$113,850	$554	$1,123	$1,408	$1,977	$2,546
3	$128,050	$660	$1,301	$1,621	$2,261	$2,901
4	$142,300	$767	$1,479	$1,835	$2,546	$3,258
5	$156,550	$874	$1,657	$2,048	$2,831	$3,614
6	$170,750	$981	$1,834	$2,261	$3,115	$3,969
7	$185,000	$1,088	$2,013	$2,475	$3,400	$4,325
8	$199,200	$1,194	$2,190	$2,688	$3,684	$4,680

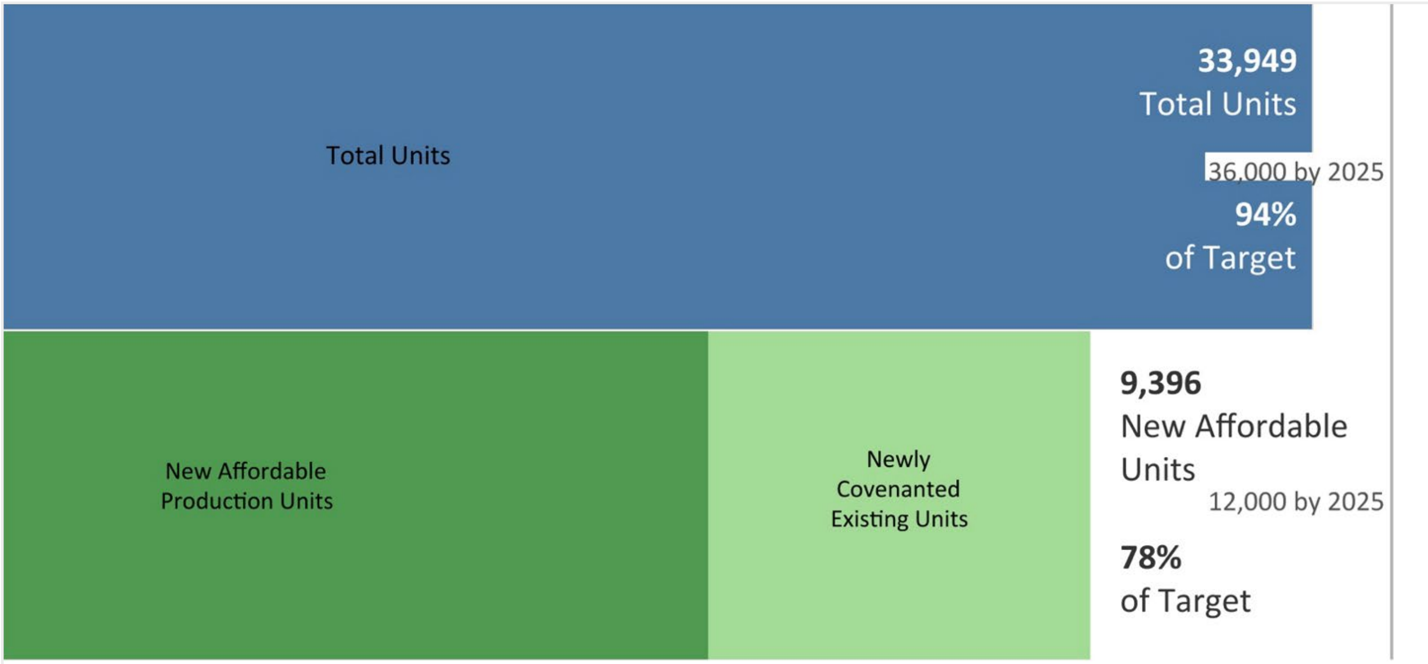
average rents. Consistent with our findings above, most renter households below 100% of MFI are likely to be housing cost-burdened.

Anticipated Housing Demand vs. Supply

While the focus of this paper is the District's existing housing stock, it is worth briefly acknowledging that projected housing demand continues to outstrip supply. According to the National Apartment Association and the National Multifamily Housing Council, the District of Columbia needs to build 2,000 new apartment homes each year to meet anticipated demand.[6]

For its part, the District has adopted even more aggressive housing production targets. The Mayor has established a goal of constructing 36,000 new homes by 2025, 12,000 of which are to be affordable to those below 80% of DC's median family income.[7]

The good news is that the District has a large number of units currently in the pipeline. We have seen a surge in building over the last four to five years. Fueled by low interest rates and abundant financing, the District has kept pace with, and even exceeded its housing production goals. This has resulted in some 13,867 units currently in the construction pipeline.[8]



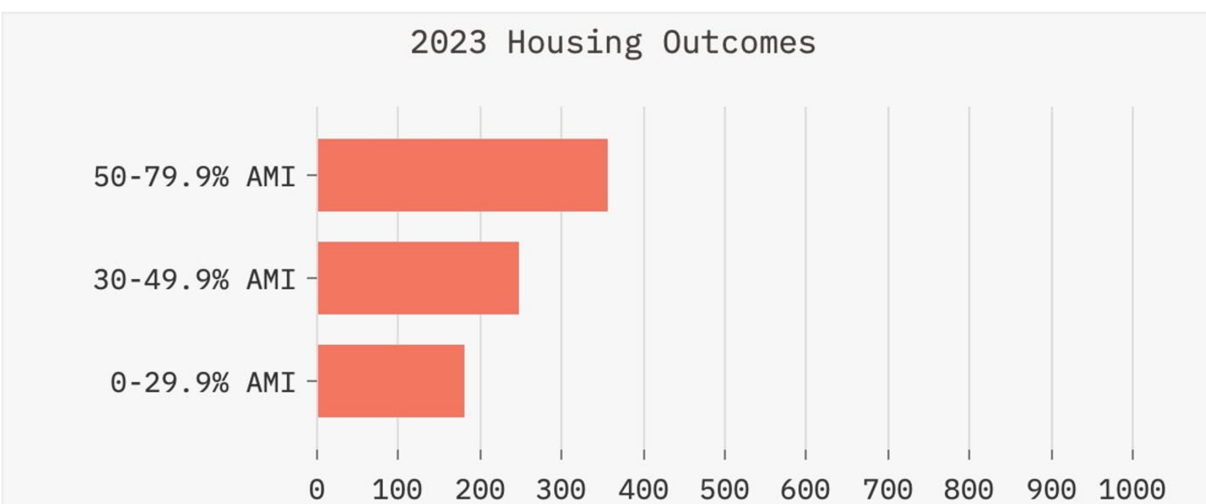
Unit counts represent net new housing units from January 2019 through end of March 2024.
Source: DCRA Certificate of Occupancy data and DMPED Affordable Housing Database (includes DHCD-DFD Database (Housing Production Trust Fund, Low-Income Housing Tax Credit), DHCD Inclusionary Zoning Database, DMPED Project Pipeline Database, Planned Unit Developments, DCHFA projects, and any non-DC Government financed projects that create new, dedicated affordable units).

Housing Goals and Progress Since 2019

The District is to be applauded for its progress in this area, having outperformed neighboring jurisdictions in the Washington metropolitan region. As depicted above, the District is well on its way to reaching its overall housing production goals.

Still, affordable housing production lags. The Housing Association of Nonprofit Developers (HAND) has developed a Housing Indicator Tool[9] that shows less than 13% of newly constructed units are affordable to residents whose incomes fall below 80% of AMI.

This falls well below the target set by the Urban Institute, which recommends that half of new housing should be affordable to individuals at or below 80% of AMI.[10]



All signs point to a sharp drop-off in new housing construction as the very same factors which drove the building boom have dried up and now threaten to exacerbate the supply/demand imbalance that drives our housing affordability challenges. The projected housing supply shortages faced by the District and the greater region only further underscore the imperative of maintaining our existing housing stock, particularly as it relates to units serving lower levels of area median income. The District can ill-afford any loss of housing units, especially those serving less affluent residents.

In spite of this, the recent building boom gives cause for some optimism. But all signs point to a sharp drop-off in new housing construction as the very same factors which drove the building boom have dried up and now threaten to exacerbate the supply/demand imbalance that drives our housing affordability challenges. As evidence of this, housing starts for multifamily projects dropped by 73% in the first quarter of 2024.

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The Universe of Rental Housing in the District

In March of 2020, the DC Policy Center released a report *Appraising the District's Rentals.*[11] The report provides an extremely helpful snapshot of the District's rental housing stock. Among the more pertinent findings of the report are:

The Distribution of Rental Housing Across the District

- An estimated 64% of the District's 322,000 housing units are rentals; of these, 124,600 (approximately 39%) are in rental apartment buildings, as classified by the city's tax administrators.

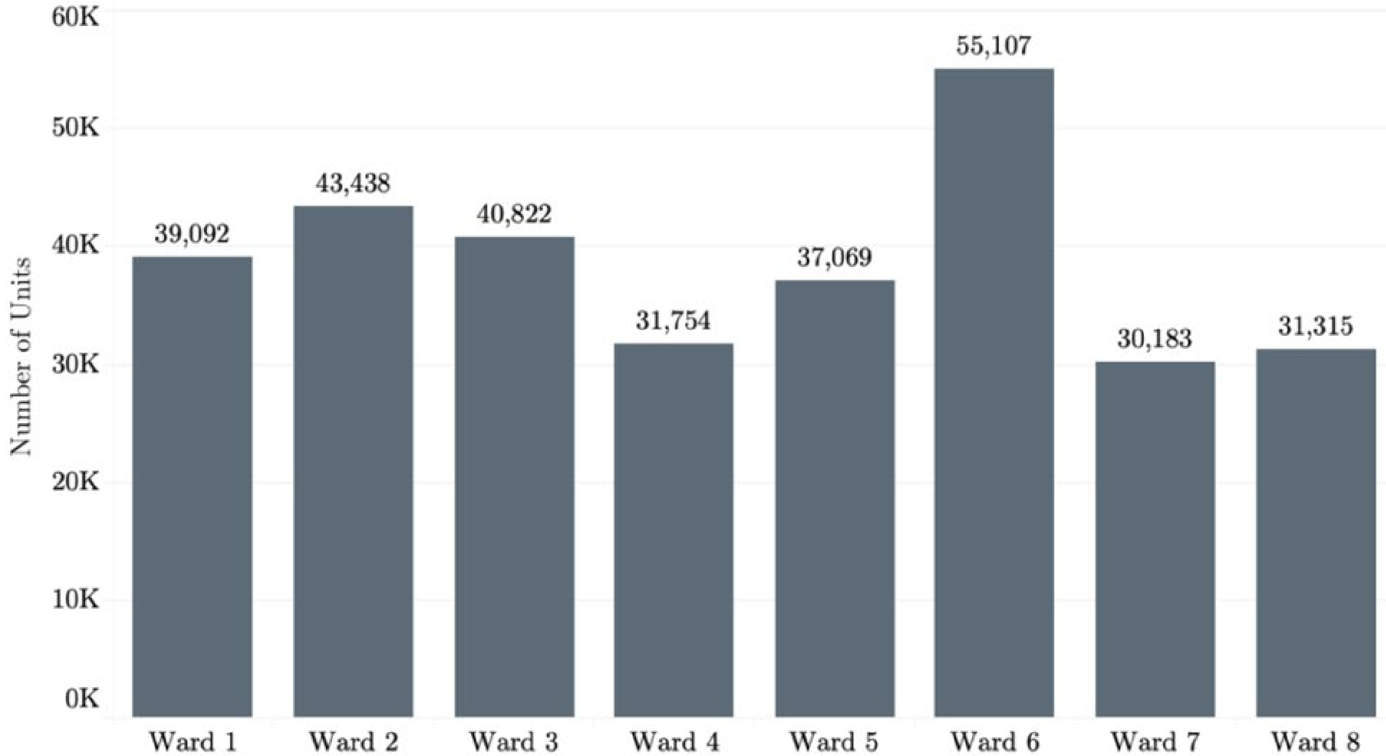
- In every ward, at least 45 percent of housing units are rentals.

  - Ward 6 has the greatest number of rentals (69%) – most in entirely new or redeveloped residential neighborhoods such as NoMa, Navy yard, and most recently, the Wharf at the Southwest Waterfront.

  - Ward 4 has the fewest rental units, as it both has a smaller stock of housing to begin with and high home ownership rates (55%, compared to the Districtwide average of 36%).

  - Ward 8 also stands out, as 81% of its housing units are rentals.

Rental housing by ward in the District of Columbia, 2019



Source: Integrated Tax System Public Extract, combined with information from Computer Assisted Mass Appraisal files (residential, condominium, and commercial) and master address repository.

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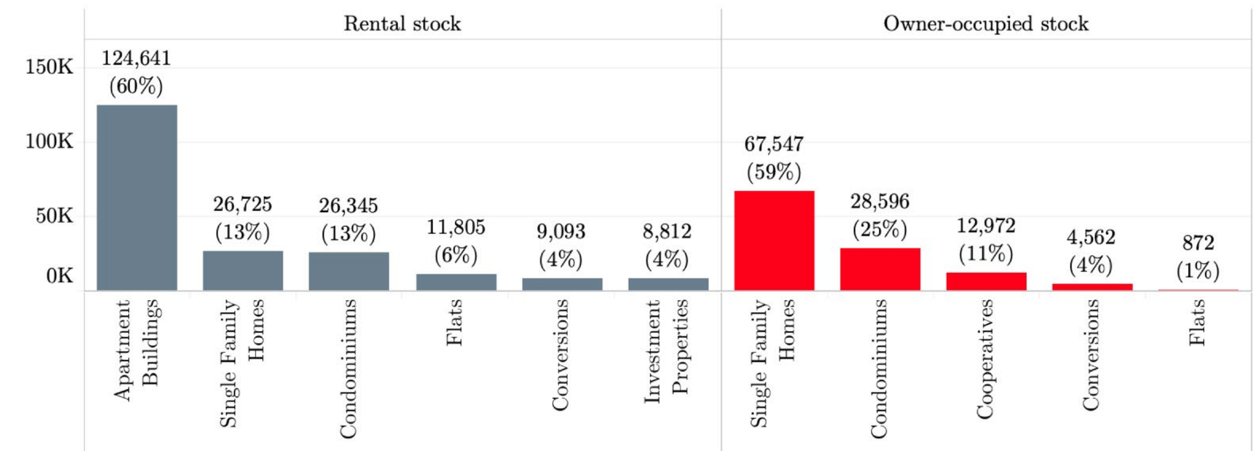
Housing in the District of Columbia by occupancy status and type, 2019

All housing units

Rental stock	207,421
Owner-occupied stock	114,550
Total	321,971



Source: Integrated Tax System Public Extract, combined with information from Computer Assisted Mass Appraisal files (residential, condominium, and commercial) and master address repository.
Note: The number of units for multi-family rental buildings and coops are not always noted in the CAMA files. When this is the case, the number of units is estimated by the number of different addresses for the building. Owner occupied count includes co-operatives, that are almost always owner occupied, but not noted in that way in the tax extract. This is because the taxable entitiy is the cooperative that owns the building, and not individual shareholders (who own the units).

D.C. POLICY CENTER

The Composition of the District's Rental Housing Stock by Housing Types

- Single-family homes, condominiums, flats and units in conversions make up roughly a third of the District's rental housing. These units are often referred to as the "shadow rental market" as they are a less regulated – and sometimes unregulated – source of housing.

The Proportion of Rent Controlled Units Among the District's Rental Housing Stock

- Approximately 73,000 of the District's rental units fall under rent control.
    - One third of the rental apartments and 40% of the rental apartment buildings that serve DC residents were constructed before 1946. These older, smaller buildings are the source of half of the current rent-controlled units in apartment buildings.
    - Rent-controlled units account for 57% of all units in rental apartment buildings (excluding those owned by the DC government or managed by nonprofits, and including those not subject to rent control), 35% of all units that are currently being rented (including the those in the "shadow rental market"), and 23% of the total housing stock.
    - In every Ward except for Ward 6, rent-controlled stock constitutes at least half of rental apartment units.

Affordable and Rent-Controlled Housing Communities Facing Financial Hardship/Risk of Failure

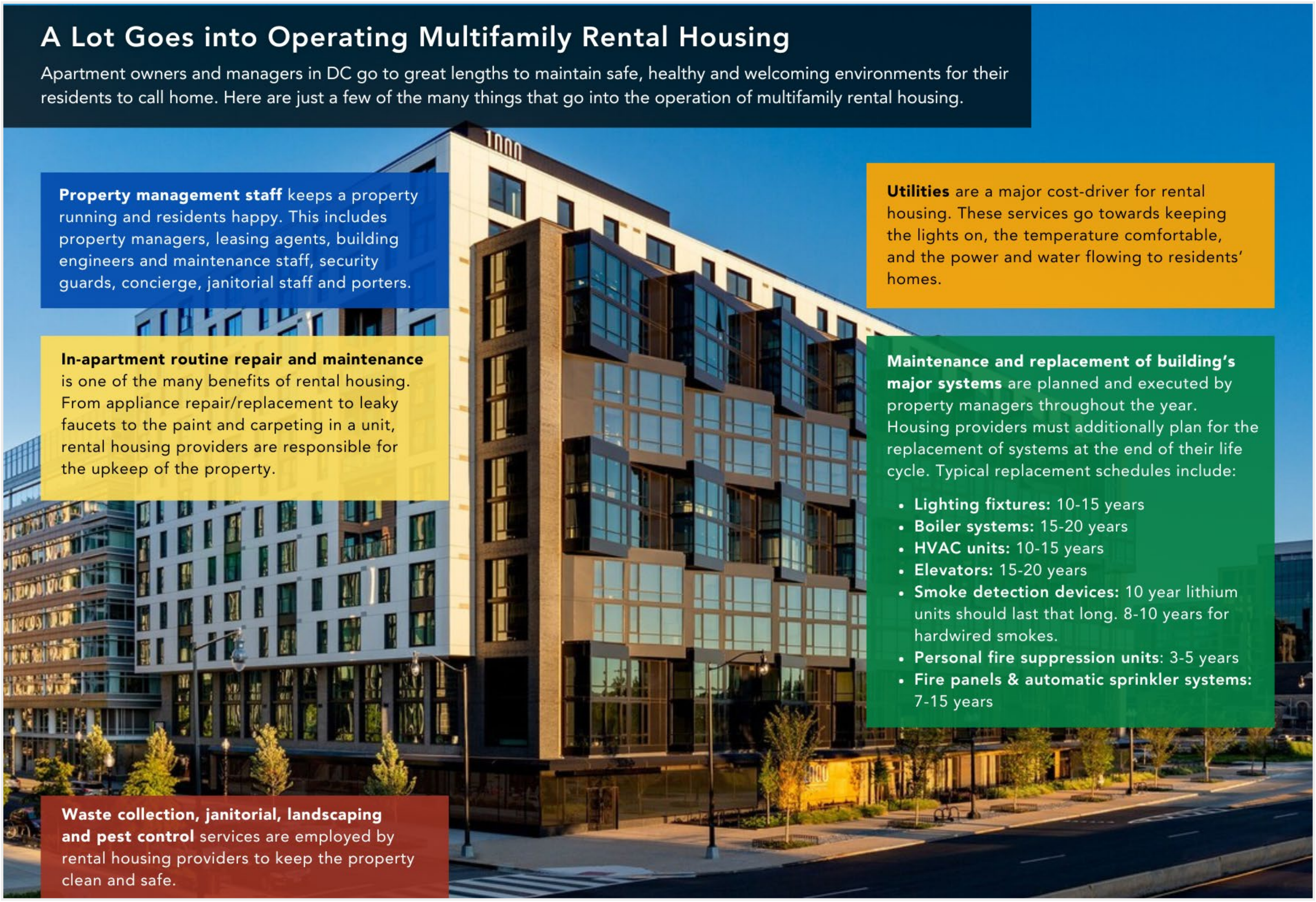
- Skyrocketing Operating Costs
- Delinquencies and Extended Court Timelines
- The Costs of Crime
- Building Energy Performance Standards (BEPS)
- The Impact of Rising Costs on Operations

The above figures clearly demonstrate the critical role of dedicated and market-rate affordable and rent-controlled apartment housing in the District. These properties not only make up a substantial portion of DC's overall housing picture, but they also constitute a substantial economic impact to the District while serving our most vulnerable residents at lower levels of the income scale.

The Mayor and Council have acknowledged the vital need to address the scarcity of these units through new affordable housing production. However, current market conditions point to a slow-down in rental housing construction at all price points, thus escalating the imperative of preserving our existing stock. Unfortunately, this critical segment of our affordable housing stock has taken on an outsized financial burden and hardship stemming from the COVID-19 pandemic. Without corrective action, many of these communities face the very real prospect of financial failure and shutting down operation, an outcome which would hold seriously damaging consequences for the District on many levels.

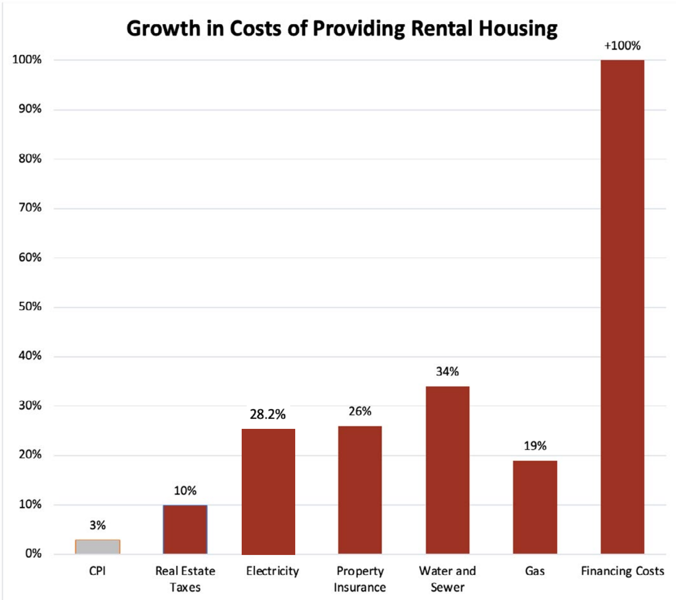
Skyrocketing Operating Costs

Housing providers generally rely on rent as a sole income stream to fund the operations of the property, including mortgage payments and interest, payroll, utilities, business licenses and other taxes, hazard and liability insurance, in-apartment routine repair and maintenance, contract services like waste collection, janitorial services, maintenance of mechanical systems, boilers, air conditioning systems and elevators, and fire suppression systems. Some may additionally be set aside for very costly replacement reserves for major system replacement and repairs to windows, masonry, roofs, elevators, plumbing, electrical and HVAC.



Highlighted below are just some of the major cost drivers for rental housing that have increased dramatically over the last four years. Notably, many of the rental housing industry's primary cost drivers have grown at a rate far in excess of CPI (listed for 2024 at 2.9%)[12]:

- Pepco distribution charges (which include customer and KwH charges and represent more than 50% of a customer's bill) have increased 28.2% since 2022 and 56% since 2020.[13]
    - If Pepco's current rate case application is approved by the PSC, the cumulative increase from calendar year 2022 through 2025 will be 59.3%.[13]
- According to HUB International, multifamily property insurance rates increased by roughly 26% last year and are projected to increase up to 50% in 2024.
    - Each of the prior two years (2021 and 2022) saw increases of more than 20%.
- Washington Gas rates increased on January 19, 2024 by 18.8%.[14]
- Water and sewer rates both increased by 34% effective October 1 of last year.[15] Rates are Proposed to increase an additional 14% over the next two years.[16]
- Interest rates increased by multiple basis points; a measure which can result in millions in additional expenses over the life of a multifamily loan.



As adopted by the City Council last year, rent increases for apartment communities that fall under the District's rent control law are subject to a cap of CPI-W (the Consumer Price Index for Urban Wage Earners and Clerical Workers) plus 2%, or a cumulative cap of 12% (8% for elderly and disabled residents).[17] For 2024, that works out to a cap of 4.9% (or 2.9% for elderly and disabled residents). While this is intended as a nod to ensuring that property owners are able to sufficiently reinvest in a property to prevent the degradation of our housing stock, the needs of each building can vary widely, and CPI is a poor reflection of the costs of operating and maintaining rental housing. CPI and CPI-W are used to track the changes in the price of consumer goods and services. While a helpful tool in predicting broader economic conditions and the costs of goods and services everyday consumers rely upon, one cannot directly extrapolate from it the costs of providing a particular service such as housing.

In reality, the hyperinflationary conditions ushered in by the pandemic have driven up the costs of providing housing at a rate far beyond the Consumer Price Index (CPI) and other traditional measures. As reflected above, CPI fails to come even close to capturing the actual costs of operating and maintaining rental housing. Moreover, it can't account for expenses specific to each individual building, particularly at a time when the costs of financing repairs for building systems – either planned or unexpected – are through the roof.

The hyperinflationary conditions ushered in by the pandemic have driven up the costs of providing housing at a rate far beyond the Consumer Price Index (CPI) and other traditional measures. This is particularly challenging for older market rate affordable and rent-controlled properties. For these buildings, DC's rent caps represent an inadequate escalator for reinvestment to stave off deterioration and effectively plan for upgrades to building systems.

This is particularly challenging for older market rate affordable and rent-controlled properties. More than half of the rent-controlled units in the District were constructed prior to 1946. These older properties have an inherently higher cost to operate given the age and replacement schedules for major building systems. These buildings require constant reinvestment to maintain safe and healthy living conditions. For these buildings, CPI represents an inadequate escalator for reinvestment to stave off deterioration and effectively plan for upgrades to building systems.

Housing providers cite extended court timelines as the primary culprit for the financial hardship they've experienced post-pandemic. Compounding matters, the elongated timeline associated with the legal process of recovering possession of a unit has driven average arrearages into the tens of thousands of dollars, and even into six figures in some cases. Individually, this represents a significant impact to a community. Extrapolated across a housing provider's full portfolio, it can add up to millions in uncollectible rent. Most providers of affordable or rent-controlled housing operate on razor-thin margins. Already faced with growing expenses and a challenging refinancing market, these cumulative losses could pose an existential threat to man communities that now faced themselves with the very real prospect of not being able to meet their ongoing financial obligations and even ceasing operations.

Delinquencies and Extended Court Timelines

Housing providers cite extended court timelines as the primary culprit for the financial hardship they've experienced post-pandemic. As detailed further in the case studies provided within, dedicated and market-rate affordable and rent-controlled communities have seen significant increases in tenants falling behind on rent since 2020. Compounding matters, the elongated timeline associated with the legal process of recovering possession of a unit has driven average arrearages into the tens of thousands of dollars, and even into six figures in some cases. Individually, this represents a significant impact to a community. Extrapolated across a housing provider's full portfolio, it can add up to millions in uncollectible rent.

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Even undisputed nonpayment of rent cases routinely take more than a year from the initial filing of a complaint with the court to when a tenant vacates the unit or is forcibly evicted by the U.S. Marshalls. Where a tenant requests a jury trial, the timeline can easily exceed two years. It is not uncommon that no payment is received by the housing provider throughout the duration of the legal process, and though a housing provider may be granted a financial judgment by the court, collection of such debts is extremely rare. Indeed, by the time a case winds up in court, the debt owed by a tenant has usually accumulated to such a degree that redemption is no longer within the realm of possibility.

Consider the example of a tenant who becomes delinquent on a two-bedroom unit leased for $2,000; well below the area market average rent of $2,613 per month. Over the course of the approximately 20 months it takes to regain possession of a unit via a jury trial, that tenant continues to accrue debt in the amount of $40,000, not including legal costs and other fees. In a 100-unit apartment building with 35 percent delinquency, this adds up to 1.4 million in unrecoverable delinquency. This quick back-of-the-envelope example demonstrates the magnitude of the financial hit for a housing provider and the obvious impact on the operations and upkeep of a community that is restricted in its ability to recover costs through higher rents. (While this particular example is hypothetical, it is well within the parameters of delinquencies reported by District housing providers. See the next section for actual delinquency data, case studies and real-life examples provided by owners and operators of affordable and rent-controlled properties in DC).

Housing providers have seen access to justice systemically diminished over the last four years. The initial moratoria on eviction proceedings gave way to hefty case backlogs, additional notice requirements, procedural hurdles, and protracted timelines for scheduling of initial hearings, mediation, pre-trial conferences, and trial dates.

- Prior to the pandemic, notice to quit for nonpayment of rent was not required and could be waived. Following the pandemic, DC Law 24-115, the "Eviction Record Sealing Authority & Fairness in Renting Amendment Act of 2022" amended DC Code §42.3505.01 (a-1) to require 30 days' notice of past due rent in advance of filing a landlord/tenant complaint.

- Scheduling of initial hearings prior to the pandemic was usually done within 40-50 days of the filing of a complaint. Initial hearings are now scheduled approximately 3 to 4.5 months out.

In total, the legal process from beginning to end is taking approximately 2-3 times longer than it did prior to the pandemic.

- Informal mediation most often occurred on the day of the initial hearing and the case many cases were settled at this point. Otherwise formal mediation would take place on the day of trial. Another 3-4.5 months before the case is heard at a bench trial.

- Scheduling of trials pre-pandemic typically occurred within 30-45 days. Under the current timeline, trials are being scheduled approximately 4-9 months from the mediation date.

- In total, the process from beginning to end is taking approximately 2-3 times longer than it did prior to the pandemic.

	Pre-Pandemic	Post-Pandemic
Notice of Non-Payment	N/A	30-days
Scheduling of Initial Hearing	30-45 days	3 to 4.5 months
Scheduling Mandatory Landlord/Tenant Mediation for Contested Cases	As early as the day of the initial hearing	3 to 4.5 months
Scheduling of Bench Trial for Contested Cases	30-45 days	4 to 9 months
Scheduling of Eviction Date	30-45	4 months
Total Process from Beginning to End	**3-5 months**	**12-16 months**

Elongated Timelines for Non-Payment of Rent/Breach of Lease Evictions Post-Pandemic

The above chart shows approximate court timelines for non-payment of rent and breach of lease cases pre- and post-COVID-19 pandemic. Depicted here are cases which result in bench trials. Jury demanded cases may add significantly more time to the legal process. This timeline does not account for ERAP stays and other continuances tenants may request. Each ERAP stay elongates the timeline by at least two months and stays can be granted at virtually any point during the legal process.

The below chart shows the somewhat convoluted and complex legal process for seeking repossession of a unit for non-payment of rent or breach of lease. Not included in this timeline, however, are the sometimes-multiple stays that are often granted to tenants, extending the legal process by months and even years. A tenant may request a stay for any number of reasons, including availability to attend a hearing, ascertainment of counsel, or a pending application for Emergency Rental Assistance Program (ERAP) funding. These continuances are routinely granted, and in the case of ERAP stays, a continuance is mandatory and judges do not have discretion.

The latter has proven especially problematic in terms of elongating the process for a housing provider seeking to regain possession of a unit. Fearful that tenants and housing providers who were waiting on rental assistance would face an eviction before that assistance was rendered, the Council included a provision within the [Tenant Safe Harbor Amendment Act], which allows for a stay of a case while tenants who had applied for rental assistance await funding.

According to the law:

> The court *shall stay* any proceedings for a claim brought by a housing provider to recover possession of a rental unit for non-payment of rent if a tenant submits documentation to the court demonstrating that he or she has a pending Emergency Rental Assistance Program application. *Proceedings shall be stayed* until a determination of funding has been made and, if the application is approved, funding has been distributed to the housing provider. When an eviction that involves non-payment of rent has been authorized by the court and a tenant notifies the housing provider that he or she has a pending Emergency Rental Assistance Program application no later than 48 hours prior to the scheduled date and time of the eviction, the housing provider shall reschedule the eviction for a date no earlier than 3 weeks from the current scheduled eviction date to allow for the application to be processed, a determination of funding to be made, and, if the application is approved, funding to be distributed to the housing provider. Any further stay or rescheduling of the eviction date may only be granted by order of the Supreme Court or by agreement of the housing provider.

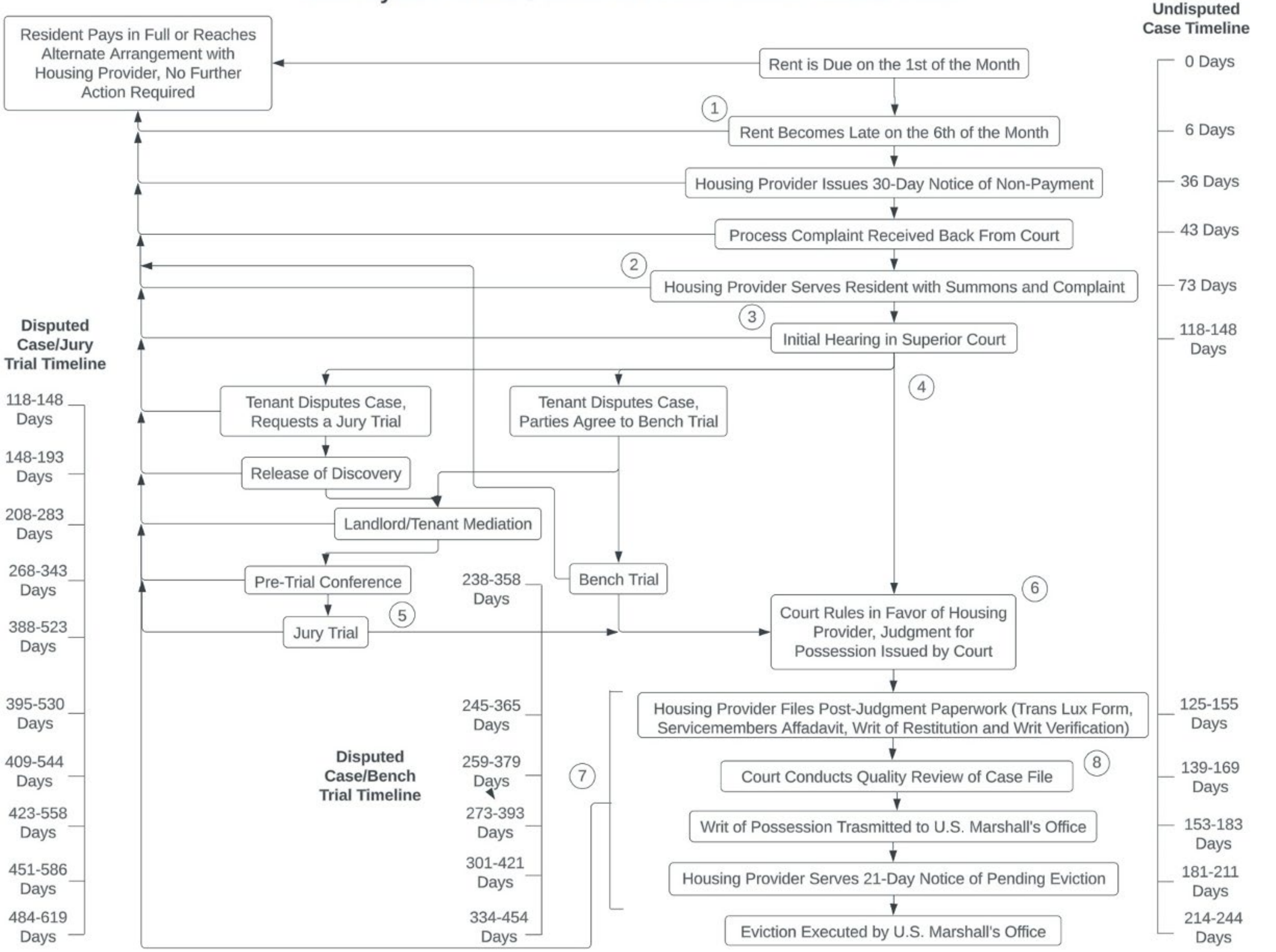
This is to say that if residents who are delinquent in rent have submitted an application or indicate that they plan to apply for an Emergency Rental Assistance Program (ERAP) subsidy, the legal process against them is automatically stayed for a minimum of 2 months. ERAP procedures allow for acceptance of applications on a quarterly basis. If funding is inadequate to provide funding upon the initial application, it is assumed that the application will remain open or the resident will file an application at the next quarterly opening. Meanwhile, the tenant remains in the unit, most often continuing to pay no rent as the process is drawn out. Housing providers have seen savvy tenants exploit this loophole, filing application after application to remain in a unit without paying rent. ERAP stays may be granted at any time during the legal process, whether at the initial hearing, on the day of trial, or even up to the very day of the scheduled eviction

Whether the case is stayed for an ERAP application or another defense asserted by the defendant, it can result in the scheduling of a further initial hearing, effectively restarting the legal process from that point.

Also problematic are the trivial and often punitive reasons for which a case may be either delayed, remanded to a further initial hearing, or thrown out entirely. Examples of this are included within several of the case studies provided below. Some cases have seen several months added to the legal timeline for failure to provide certain notice that was not required at the time of filing the case. Similarly, other housing providers report cases being dismissed entirely and being forced to re-file after more than a year of waiting for completely inconsequential reasons such as a a typographical error or text running past the margins on the court forms or the resident agent's name not being listed on the Rental Accommodations Division (RAD) form. These are cases in which a judge or jury has established the culpability of the tenant for rent owed and gone so far as to issue a judgment for possession to the property owner. Such action should occur only for reasons that may have prejudiced the case against the tenant. Rather, in these instances, mere technicalities are being exploited to allow residents to continue living rent-free at the expense of the housing provider and other community members. This constitutes a departure from Court of Appeals precedent. Prior to the pandemic, the court relied upon the proposition that a case should be heard on the merits, rather than on the technicality of the pleadings if the court found in its discretion that there was no prejudice to the defendant.

Also problematic are the trivial and often punitive reasons for which a case may be either delayed, remanded to a further initial hearing, or thrown out entirely. These are cases in which a judge or jury has established the culpability of the tenant for rent owed and gone so far as to issue a judgment for possession to the property owner. Such action should only occur for reasons that may have prejudiced the case against the tenant.

Non-Payment of Rent/Breach of Lease Eviction Process in DC



1.) The Late Fee Fairness Act stipulates a mandatory 5-day grace period. Rent is not considered late and a housing provider may not initiate any action against a tenant until the 6th day of the month.
2.) Service of Summons and complaint must occur a minimum of 30 days prior to a scheduled hearing.
3.) An initial hearing may be scheduled no sooner than 21 days after a complaint is filed by the housing provider. In practice, however, it typically takes far longer than that for the scheduling of the initial hearing.
4.) Upon the initial hearing in Superior Court, a judge may rule in favor of the housing provider if the tenant fails to appear. If a tenant appears in court and disputes the eviction, a subsequent hearing will be scheduled no sooner than 10 days after the initial court date. If the housing provider or the tenant requests a jury trial, it will be scheduled no sooner than 2 weeks after the initial hearing. Again, in practice, it typically takes about 4-7 moths for the scheduling of a bench trial, or 9 months to a year for a jury trial.
5.) Scheduling of pre-trial conferences depends entirely on the associate judge's trial calendar and can take significantly longer than depicted here. The same holds true for scheduling of jury trials. **The legal process is automatically stayed for a minimum of 2 months when a tenant applies for an Emergency Rental Assistance Program (ERAP) subsidy, regardless of their qualification for funding. Multiple stays may be issued over the course of a single case and tenants may apply quarterly.**
6.) If the court rules in favor of the housing provider, a writ of restitution is ordered no sooner than 2 days after the ruling. The housing provider must then file a completed writ with the court, which is immediately transmitted to the U.S. Marshall's office for sheduling. The writ is served upon the resident by U.S. Marshalls. The Marshalls will execute the eviction if the resident has not vacated the unit within 3 days. If a financial judgment is awarded to the housing provider, the eviction will be stayed for 14 days.
7.) A tenant may pay in full or reach an alternate agreement with the housing provider to remain in the unit and cancel an eviction any time up to the execution of the eviction by the U.S. Marshall's office.
8.) If the court finds and advises the housing provider of any defects in the case, the housing provider must then file a motion to get in front of a judge to correct. This can add an additional 30-75 days depending on court scheduling of the motion. **Cases may be delayed or even dismissed for techical reasons that in no way influence the merits of the case.**

The Inadequacy of Rental Assistance Funding

On April 12, 2021, Mayor Muriel Bowser rolled out the Stronger Together by Assisting You (STAY DC) program to provide rental and utility assistance to residential tenants in the District. The Program was funded with $350 Million in federal funds, a sum that would quickly prove inadequate to meet the tremendous need brought on by the pandemic.

A moratorium on evictions had been in place for more than a year at this point. While this protected them from being evicted and displaced amidst a global health emergency, many tenants impacted by the business closures associated with the government-ordered shutdowns immediately fell behind on rent obligations. That debt only continued to accrue month after month and many tenants racked up significant delinquencies from which they could never hope to recover without financial assistance. The District laudably took action to stand up the new program and disseminate the federal funding in an effort to help eliminate these balances. But funding was quickly depleted. Just a few short months after launching, the program closed its application process on November 2, having exhausted its funding.

The STAY-DC program has since closed, having depleted its allotment of federal funding. The Emergency Rental Assistance Program (ERAP), which predates the COVID-19 pandemic, remains. If the current sluggish court process and automatic stays for ERAP applications required by law are not addressed, any feasible level of increased funding for ERAP will likely prove insufficient.

The Costs of Crime

Since the pandemic, the District has been plagued by a sharp spike in violent crimes and crimes committed against property. 2023 saw homicides rise by 34% over the previous year to the highest level seen in two decades. Over 900 carjacking offenses were reported. Violent crimes were up 40%.[18]

AOBA and other business groups lauded the Mayor and City Council's recent action to adopt the "Secure DC" legislation, aimed at overhauling the District's approach to public safety. However, it will take both time and additional measures to combat the scourge of criminal activity that has terrorized residents and hindered the reemergence of our commercial sector.

Housing providers in certain areas have reported reduced leasing activity due to prospective renters' concerns with criminal activity. To combat this, and for the protection of existing residents and personnel, many have taken on the onus of investing in additional security to fill the void where the District has failed to adequately provide for public safety, a fundamentally public responsibility. For many this has meant additional on-site security personnel or added cameras. (It is worth noting as well that many other housing providers' expenses for security have increased substantially without adding any additional staff or measures due simply to wage increases and realignments that took place in the wake of DC's new minimum wage laws.)

An additional challenge that has arisen out of the spike in criminal activity is the reduced availability and heightened expense of insurance coverage. Many have seen their insurance premia rise exponentially since the pandemic. On average, insurance costs across the industry have grown by 26% in the last year.

Many cite increases in the range of 40%. But more troubling than that, is that many have been forced to forgo certain coverage as policies have become unattainable in certain areas of the District. For example, many AOBA members have been unable to renew or obtain replacement Assault, Battery and Firearm (ABF) coverage, based on criminal activity incidents in the areas surrounding the property itself. That is to say that many property owners have had their coverage cancelled, having never reported a claim or incident on site. These communities are in an incredibly vulnerable position, wherein they could be held liable for an incident that occurs on the property. Given the razor-thin margins on which affordable housing providers operate to begin with, one incident could very well bankrupt a community, forcing it cease operations. Equally troubling, many financiers will not consider properties that are not fully insured. This could force properties into closure as well, as existing loans come due for refinancing.

Building Energy Performance Standards (BEPS)

While not the core focus of this paper, compliance with new Building Energy Performance Standards (BEPS) represents a significant cost driver for apartment owners and operators going forward. Market rate affordable and rent-controlled housing tends to come in the form of older buildings, which will require substantial capital investments to meet the stringent performance standards.

For many of these buildings, compliance will mean retrofitting to allow for "electrification," swapping out building systems that run on fossil fuels for electric-powered systems. But the costs go way beyond the price of installing new systems. Electrification projects frequently require heavy-up to support these new appliances and can trigger additional costs and regulatory compliance requirements under stormwater management (SWM) and green area ration (GAR) regulations. One member building obtained an estimate for work at a cost approaching $1 million, or $2,873 per unit. Keep in mind, this building currently offers rents affordable to DC residents below 80% of AMI, at about $1,300 per unit. The costs of transitioning HVAC systems alone to electric will exceed 50% of the building's value as assessed by the District's Office of Tax and Revenue (OTR).

Notably, providers of rent-controlled housing saw allowable rent increases reduced last year, severely inhibiting their ability to budget for the types of significant structural and electrical upgrades that will be required in order to comply with BEPS in older housing stock.

The Impact of These Costs on Operations

As detailed above, the costs of providing housing have skyrocketed in the four years since the COVID-19 pandemic. Approximately 95% of rent collected goes directly to the cost of maintaining, managing and operating the property.[18] Utilizing data derived from the operating statements of federally mortgaged properties in the District of Columbia, the National Apartment Association (NAA) recently released an updated analysis breaking down where a dollar of rent goes. The findings of this new report provide helpful context for policymakers to consider and illuminate the economic intricacies of rental housing that can easily be disrupted, jeopardizing the ability of rental housing providers to cover their expenses and in turn lead to a reduction in housing quality and quantity.

After financing costs, operating expenses, payroll, taxes and set asides for capital improvements, only 5 cents of every dollar of rent are returned to the housing provider. **And this assumes full occupancy and a 100% collection rate; something few housing providers are seeing in today's market.** What is more, only a small portion of this actually ends up in the owner's pocket. Investors gain primarily from the value growth of their assets. Thus, the bulk of this sum is generally reinvested into the property or leveraged to produce new housing. See the next page for a breakdown of these expenses:

District of Columbia Expenses Breakdown

Operating Expenses	
Employee Payroll	$ 0.02
Property & Liability Insurance	$ 0.04
Taxes	$ 0.06
Utilities	$ 0.11
Management Fees	$ 0.05
Professional Fees	$ 0.01
General & Administrative Fees	$ 0.03
Marketing Fees	$ 0.00
Other Expenses	$ 0.00
Repair & Maintenance	$ 0.10
Total Operating Expenses	**$ 0.42**
Capital Expenditures Reserves	**$ 0.02**
Mortgage Payment	**$ 0.51**
Total Expenses	**$ 0.95**
Profit/Loss	**$ 0.05**

Note: Totals may not sum $1.00 due to rounding.

Data Sources:

Data is based on 2022 operating statements from multifamily properties with 5 or more units securing loans in Freddie Mac CMBS. Data is comprised of lender underwritten financials and appraised values and serialized operating statements extracted from agency multifamily CMBS offering circulars and trustee reports.

Notes:

1. Capital Expenditure Reserves: These funds are reserved for long-term improvements and unexpected repairs on the property. This might include expenses like replacing roofs, upgrading HVAC systems, repaving, flooring and appliances.

2. Operating Expenses: Operating expenses cover the day-to-day costs associated with running a rental property. This category covers expenses such as utilities (water and sewer, electric, gas, etc.), routine repairs and maintenance (HVAC, plumbing, electrical and regular supplies and service). It also includes fees like property and liability insurance, legal and accounting services, management fees, marketing fees, general and administrative fees (equipment, eviction expenses and office supplies) and other operational expenses.

3. Mortgage Payment: This refers to the payments made on any loans taken out to finance the purchase of the property.

4. Payroll Expenses: These costs relate directly to the salaries, wages and benefits of individuals employed to manage or maintain the rental property.

5. Property Tax Expenses: Property taxes are levied by local governments and are typically based on the assessed value of the property. These funds often support local infrastructure, schools and public services.

Sources: National Apartment Association, Thirty Capital Performance Group, weareapartments.org

NATIONAL APARTMENT ASSOCIATION

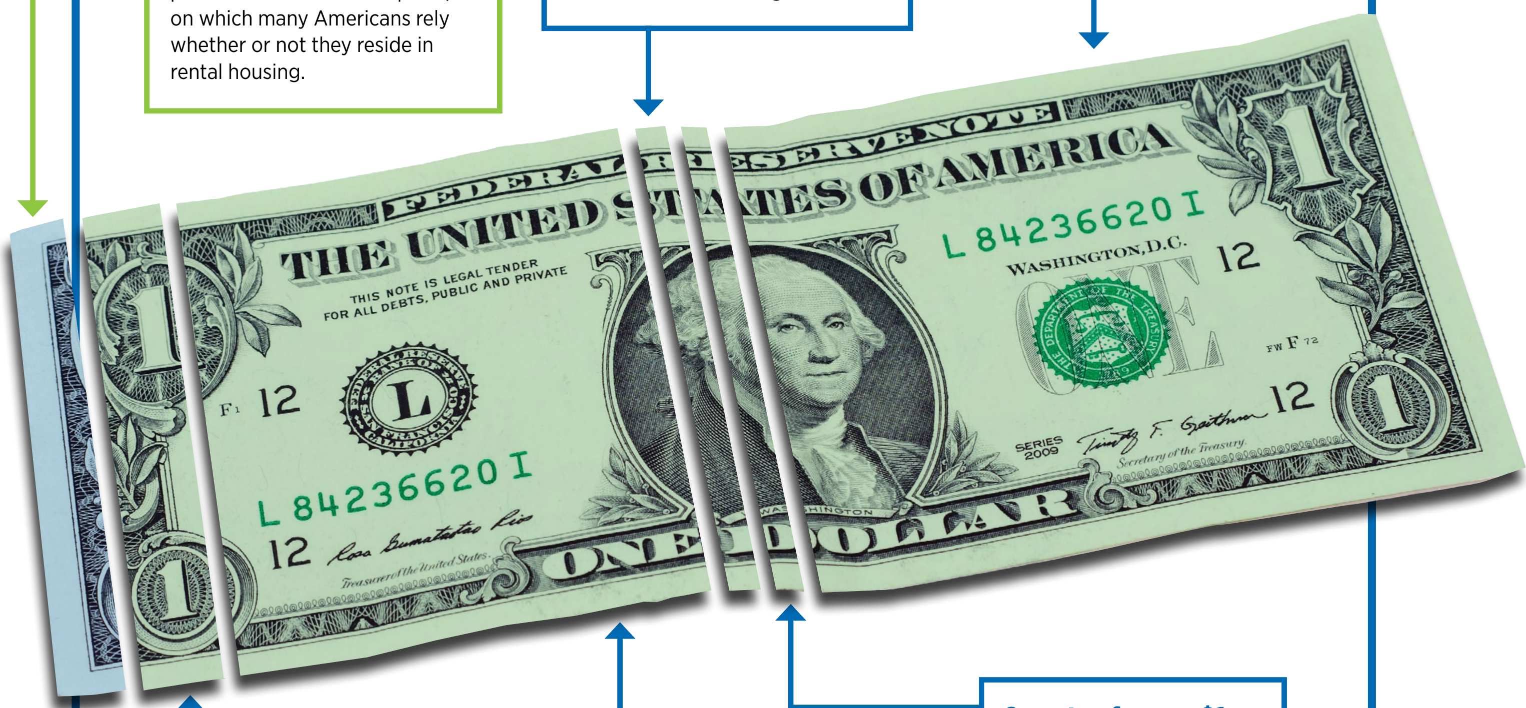
2023: Breaking Down $1 of Rent in the District of Columbia

With so much discussion around rent payments and the prevailing misconception that rental housing owners enjoy large margins, the industry would like to offer this explanation of the breakdown of $1 of rent based on the state average.

Only 5 cents of every $1 is returned to owners as profit, including the many apartment owners who are themselves small businesses and rely on this revenue to make ends meet, and investors, which include public pensions and retirement plans, on which many Americans rely whether or not they reside in rental housing.

2 cents of every $1 goes toward capital expenditure reserves. The funds in these reserves cover roof and HVAC replacements and other important repairs that help ensure quality housing for Washington, D.C.'s 224,300 rental housing residents.

51 cents of every $1 pays for the mortgage on the property. This is a critical expense, as mortgage foreclosures put all residents at risk of losing their housing.



6 cents of every $1 goes to property taxes, which in turn support the community through financing for schools, teachers, emergency services and other important local needs.

34 cents of every $1 pays for operating expenses such as property and liability insurance, utilities and ongoing maintenance.

2 cents of every $1 covers payroll expenses, including pay for employees who operate and maintain the community as part of the 55,500 jobs that the industry supports.

Between mortgage payments, investor returns—which help support many Americans' retirement plans—and dollars put back into the apartment community to ensure quality living for residents, a rent payment is much more important than one might otherwise realize.

Sources: National Apartment Association, Thirty Capital Performance Group, weareapartments.org

The rental housing industry, which is predominantly made up of small "mom-and-pop" owners, operates on very narrow margins. Unlike other industries, the folks who provide housing to our communities rely on rent as a singular revenue source, and do not have the ability to balance losses with other revenue categories. Properties with such significant numbers of tenants in delinquency will inevitably see a reduction in services to residents or a deferral of planned capital investments.

As cited above, rent-controlled properties are limited to an annual rent increase of up to 4.9%. In the current market, most owners of affordable and rent-controlled housing see little to no return back to investors. The vast majority of rent collected (51%) goes towards mortgage payments. For those buildings that have come up for refinancing in the last four year, those costs have increased exponentially. Thirty-four cents on every dollar of rent collected go towards items like utilities and insurance. Those costs have grown by 20-35%. Combined, these line items account for approximately 85% of an apartment community's total expenses. When all of those costs rise by double-digit percentages and revenue growth is capped at 4.9%, it doesn't leave a lot of flexibility to maintain the same level of service and operations. Add in significant delinquencies, and the housing provider can quickly find themselves on the red side of the ledger.

Notably, the above data with regard to the breakdown of expenses is derived from the operating statements of multifamily properties serving all income levels. This skews the cost allocation percentages significantly. Any amount less than 50-60% of revenue collections going towards the operation of the property would be atypical for affordable housing communities. This is because it costs approximately the same amount to operate a building regardless of the rents. For instance, an affordable housing provider pays the same rates for water, gas, electricity, etc. But percentagewise, it represents a greater share of the property's budget. Some line items are actually more expensive. Multifamily properties operating east of the river in Wards 7 and 8 pay more for costs such as insurance and security. This makes the operating margins for affordable housing providers that much tighter. When they are unable to collect the rent, it inevitably affects the operations and upkeep of the property.

When affordable housing providers are unable to collect the rent, it inevitably affects the operations and upkeep of the property.

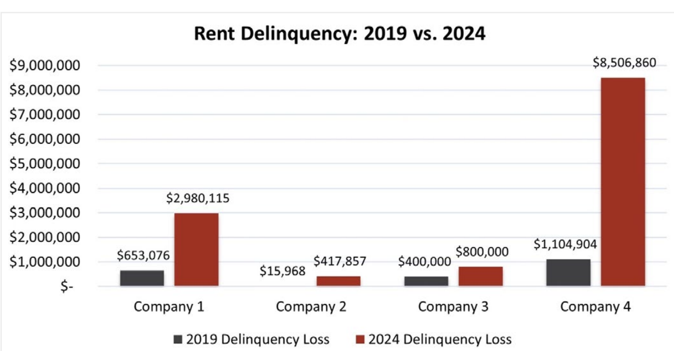
Delinquency Data/Case Studies

- **Survey of DC Housing Providers**
- **Case Studies/Examples**

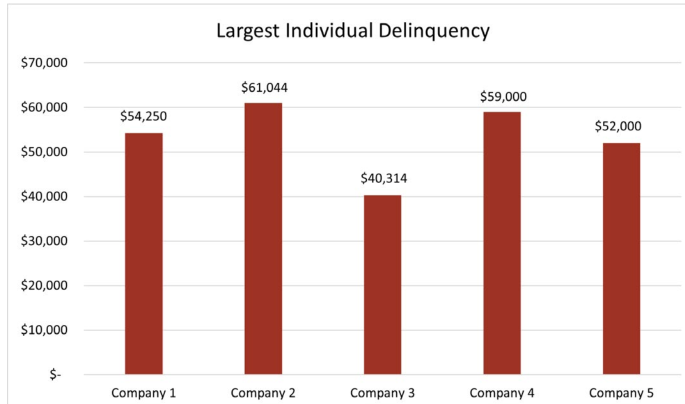
Survey of DC Housing Providers

AOBA conducted a survey of member companies who own and operate dedicated and market-rate affordable and rent-controlled apartment housing in the District of Columbia to determine the scope of the problem. While results vary based on the individual housing provider's portfolio, the survey data provides some constructive information for assessing the breadth and pervasiveness of delinquencies.

AOBA received responses from five housing providers representing 13,788 dedicated and market-rate affordable and rent-controlled units across 126 properties, located in all 8 wards. Combined delinquency loss amongst respondent housing providers was $12,704,831.52. This is an astonishing sixfold increase over pre-pandemic levels. The average across the five housing providers' affordable and rent-controlled portfolios for largest tenant delinquency was $53,321.



Respondent Housing Providers saw an astonishing sixfold increase in delinquency loss over pre-pandemic levels.



Case Study #1

Company A is a locally based housing provider, operating in the District for 50 years with a particular focus on creating and preserving naturally occurring affordable housing. The affordable segment of their portfolio comprises 2,011 units across ten rental communities located in Wards 7 and 8 with an average rent of $1,289 per month (roughly $900 below median rent for the District).

Since the pandemic, delinquency rates across the ten communities have increased more than fourfold from an average of 2.3% in 2019 to 9.3% last year. This represents a loss of nearly $3 million just in 2023. More than one in five residents in these ten communities now find themselves more than a month behind in rent, drastically higher than the paltry 1.5% observed pre-pandemic.

Delays in the legal process for securing repossession of a unit have helped to dig communities like these into a deeper and deeper financial hole. Courts have been extremely liberal in their granting of continuances, extending some cases in excess of three years, while debts continue to accrue month after month. For example, one resident at one of Company A's affordable communities has racked up $54,250 in unpaid rent.

With an average arrearage of $8,165, there is little chance these residents will be able to catch up and make good on their financial obligations, leaving the housing provider and other residents holding the bag for those lost revenues. In total, the company now carries an uncollectible rent balance of more than $6.3 million in the four years since the outset of the COVID-19 pandemic. Compounding matters, Company A has seen vacancy loss roughly double across the affordable segment of their portfolio attributable to leasing challenges related to increased crime in Wards 7 and 8. This represents a further financial hit of approximately $800,000.

In keeping with industry figures outlined above, Company A has additionally seen operating expenses increase 15.8%. Insurance costs alone have grown by roughly 40%, in spite of seeing assault and battery and firearm coverage all but eliminated due to lack of availability in neighborhoods with higher incidents of violent crime. That is to say that in spite of the sharp increase in insurance costs, these communities are potentially vulnerable for liability if a criminal act occurs on the property. At the same time, the cost of providing on-site security has risen from $1.1 million to $1.5 million; a product of wage growth and mandated minimum wage increases.

Washington DC Housing Provider
Rent Arrearage Analysis of 2,011 Affordable Apartments in Ten Communities
2023 Compared to 2019

Units*:	2,011		2,011				
Communities:	10		10				
Affordable:	AFFORDABLE		AFFORDABLE				
	2019		2023		Difference		
	Washington DC	Rate	Washington DC	Rate	Washington DC	Pct	
Total Rent Revenue	$ 28,169,191		$ 31,104,687		$ 2,935,496	10.4%	(1)
Total Delinquency Loss	$ (654,196)	-2.3%	$ (2,888,808)	-9.3%	$ (2,234,612)	341.6%	
Total Rent Loss Vacancy	$ (711,458)	-2.5%	$ (1,508,553)	-4.8%	$ (797,095)	112.0%	
Net Rent Revenue (i.e. Collected Rent)	$ 26,803,537		$ 26,707,326		$ (96,211)	-0.4%	
Ave Economic Occupancy	95.2%		85.9%				
Aged Receivables, owes $1,500 or more	12/31/2019		3/31/2024				
Rent Receivables Balance	$ 98,212		$ 3,453,961		$ (3,355,749)	-3416.8%	(2)
Nmber of Units	31		423		(392)	-1264.5%	
Percent	1.5%		21.0%				
Per Unit Ave Delinquency	$ 3,168		$ 8,165				
Rent Receivables Balance, Including Past Residents	$ 536,234		$ 6,008,018		$ (5,471,784)	-1020.4%	
Aged Receivables, Total	12/31/2019		3/31/2024				
Rent Receivables Balance	$ 212,809		$ 3,633,369		$ (3,420,560)	-1607.3%	
Nmber of Units	274		739		(465)	-169.7%	
Percent	13.6%		36.7%				
Per Unit Ave Delinquency	$ 777		$ 4,917				
Rent Receivables Balance, Including Past Residents	$ 782,955		$ 6,323,081		$ (5,540,126)	-707.6%	

(1) Operating Expenses increased 15.8% in the same period
(2) One resident owes up to $54,250

Case Study #2

Company B owns and manages 80 apartment communities across all eight wards. Cumulatively, their portfolio accounts for 2,758 dedicated affordable housing units, and 4,078 more that are subject to DC's rent control law. Average rent for these units range from $1,100 to $1,985, serving residents whose incomes fall between 60% and 80% of AMI.

As a large operator of affordable and rent-controlled units in the District, Company B's portfolio alone represents a significant share of DC's affordable housing stock. Some 23% of the residents in Company B's portfolio (1,568/6,836) are currently delinquent in rent payments, accounting for a total delinquency approaching $9 million. The percentage of residents delinquent has grown by a factor of more than three since the COVID-19 pandemic. Prior to March of 2020, the delinquency rate hovered closer to 7%. The average arrearage per delinquent tenant is $5,745, but many tenants have built up massive balances as high as $53,043.

Two particular examples from Company B's portfolio are detailed below.

The first is demonstrative of the various loopholes and technicalities that may be exploited by a tenant to remain in a unit for an extended period of time without paying rent – in this case, approaching 3 years.

After failing to make their rent payment for September 2021, a notice of 60 days was requested on October 25, and later served on November 9. The notice period expired on January 8, 2022 and a suit was requested on January 10, and the court date was scheduled for May 13. However, on May 13, the case was postponed until August 16 due to language issues in the notice and a pending ERAP appointment on May 23. At the August 16 hearing, the case was postponed again to September 30th for a further initial hearing pending an ERAP application. September 30, the case was postponed once more to November 8th for yet another initial hearing because the tenant requested a Spanish interpreter. When the parties returned to court on November 8, the judge dismissed the case because of the language that was in the original notice. This is a common complaint among housing providers. The courts have been inconsistent. While some have upheld that the statute that controls the notice for non-payment is the statute that exists at the time of the filing of the complaint. Other judges have thrown out cases entirely and required them to start over at the beginning of the process to comply with legislative changes made subsequent to when the action was initiated by the housing provider. After more than a year, this effectively required that Company B restart the legal process at square one.

A new complaint was filed on February 16, 2023, and the initial court date was scheduled for June 22. However, on June 22, the case was dismissed for lack of service due to a change in the court ruling that now requires the affidavit of service to be filed 21 days before the court date, or the case will not be called in the courtroom. Again, the housing provider was penalized for failing to meet a moving target as the rules were changed mid-stream.

With four more months having passed, a third complaint was filed in June and the initial hearing was scheduled for October 27. The tenant appeared at the hearing on October 27 and a protective order was entered. Mediation was scheduled for April 24, 2024 the trial was scheduled for June 25th, 2024.

On December 1, 2023, a motion for sanctions was filed, and the hearing for sanctions was held on February 16, 2024. The motion was granted and the defenses were struck. The case was then scheduled for an ex-parte hearing March 7.

However, on March 7, the case was dismissed by a different judge because the notice of past-due rent did not include the required Violence Against Women Act (VAWA) form, the requirement for which went into effect after the case was filed. Back to square one once more.

On March 7, 2024, the fourth past-due notice was filed, served, and ultimately expired on April 19. A suit was requested that day and a new court date is scheduled for July 12th, 2024. This case was originally filed in October of 2021 and has been dismissed three times due to multiple technicalities caused by changes in court rules that occurred after the cases were filed. Currently, the tenant's rent-only balance amounts to $51,131.00. Presuming the tenant again requests a jury trial, Company B may hope to regain possession of the unit in mid- to late-2025, some four years after the tenant ceased paying rent.

In a second example from Company B's portfolio, a complaint was filed against a tenant for failure to pay rent on December 19, 2022, initiating legal proceedings. An initial hearing was scheduled for April 10, 2023, which was subsequently continued to May 25. On May 25, a protective order was entered and another further initial hearing was set for July 27.

At the July 27 hearing, the defendant failed to appear and a default judgment was entered with a scheduled ex-parte hearing for August 23. At the ex-parte hearing, the judge granted a redeemable judgment for possession to the housing provider. The writ was approved on October 13. The tenant applied to stay the writ on October 19, leading to a remote hearing on November 3. The scheduled eviction for November 14 was ultimately cancelled due to a pending ERAP application.

With the writ being quashed, an alias writ was filed on January 10, 2024 and approved on February 20 after the tenant's ERAP application was rejected for failure to meet the program's income requirements. The tenant filed another application to stay the writ on April 1, just a day before the scheduled eviction on April 2 and a single day after the ERAP portal opened again to new applications, due to another pending ERAP application. A remote status hearing was held on April 29 and the tenant failed to appear. Nevertheless, the case was stayed until May 23 due to the pending ERAP application.

The provision of law which requires an automatic stay of eviction for an ERAP application, regardless of whether the tenant qualifies for such assistance has prevented the housing provider from executing a judgment received in August of 2023. Meanwhile, the rent continues to accrue on the unit. Currently, the tenant rent-only amounts to $53,043.00 for a tenant who moved into the unit in 2022.

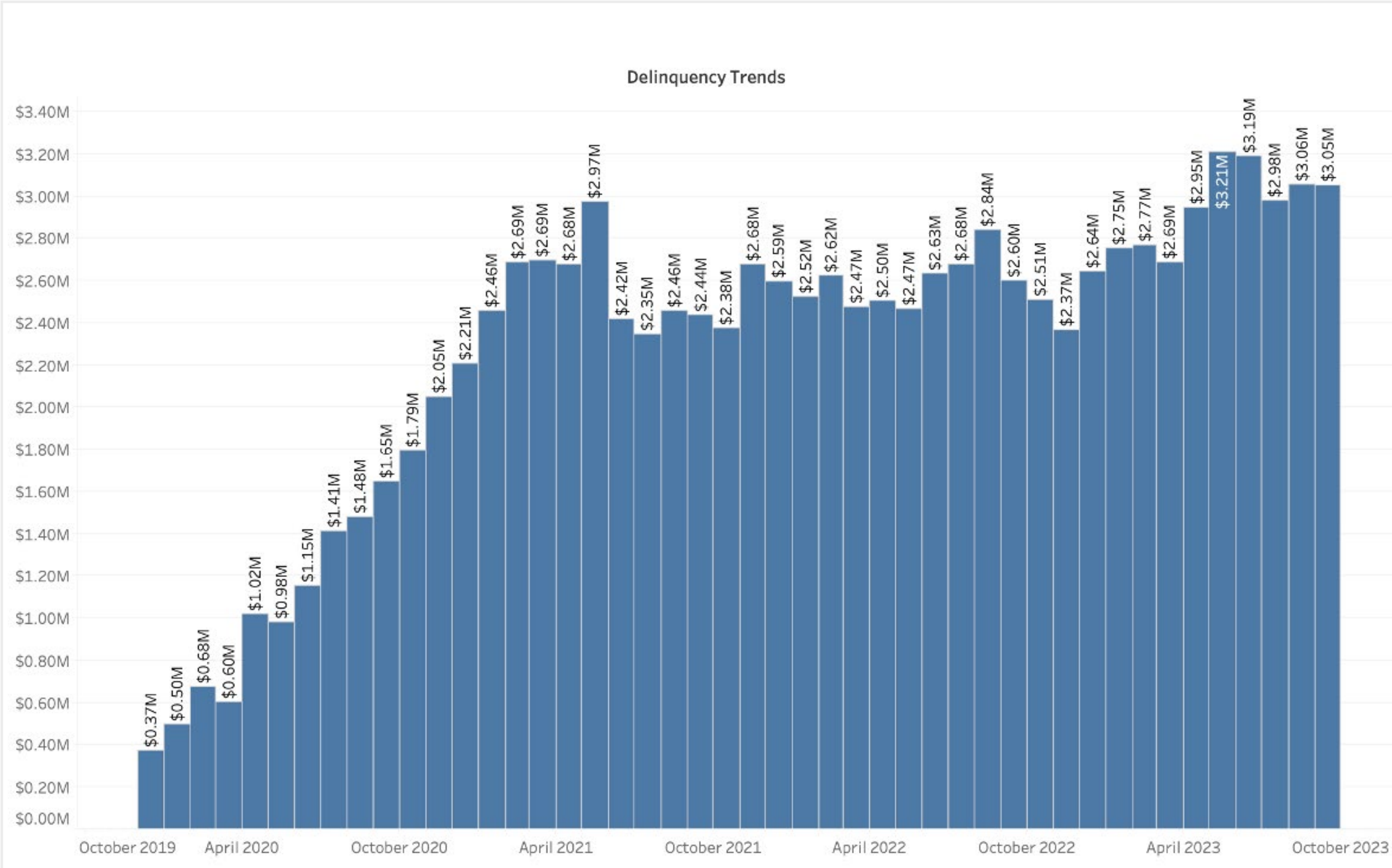
These cases are particularly demonstrative of the challenges faced by housing providers in seeking to regain possession of a unit. But they are in no way isolated incidents. Company B reports having dozens of other examples of ongoing cases in which tenants have been allowed to remain in a unit without paying rent for months and even years at a time. Company B has exhausted its reserves over the course of pandemic as a result of cumulative losses stemming from cases like these. The company is unable to move forward with planned replacement and upgrades of building systems, rooves, etc.

Case Study #3

Company C has seen fewer tenant delinquencies. Property management attributes this to the nature of its portfolio, which serves a broader range of residents across the income scale with rents ranging from $1,500 to $3,000. The more compelling statistic with regard to Company C's portfolio is the disproportionate share of delinquencies accumulated by a relatively few residents whose accounts receivable run into the tens of thousands of dollars. Numerous tenants have balances of between $20,000 and $40,000 that continue to grow each month. Detailed below are two particularly egregious examples.

Individual 1 used the court system and its delays fully to their advantage to remain in their unit without paying rent. The tenant moved into the property in May of 2021 and ceased making rent payments in March of 2022. The company offered the resident a payment plan, which they declined to accept. The resident racked up a balance of over $39,000 before vacating the unit in July of 2023 before Company C was able to have their day in court. In almost a year since this time, Company C has been able to collect $0 of the balance due and does not anticipate being able to recoup any of the significant arrearage.

Individual 2 currently remains a tenant at one of Company C's properties. After moving into the building in October of 2020, they stopped paying their rent in August of 2022. Company B initiated the legal process in September of 2022 and has still yet to regain possession of the unit. The tenant continues to get court dates pushed back and judgments stayed by continuously applying for ERAP (and subsequently getting denied). They currently have a balance of over $44,600. This balance, of which Company C will likely never see a penny does not take into account the thousands the company has spent in legal bills.



Case Study #4

Company D is a large provider of market rate and rent-controlled housing. The company manages more than 7,500 units, with the bulk of its DC portfolio located in Wards 1, 2, 3 and 4.

Since the outset of the COVID-19 pandemic in March of 2020, rolling delinquencies across the company's rent-controlled portfolio steadily climbed from around a half million to a peak of over $3 million. Delinquencies have effectively plateaued here at a point roughly six times what they were prior to the pandemic.

Each of the rolling delinquency figures depicted in the chart above represent a snapshot in time of unresolved outstanding tenant accounts. Even factoring in money received through the Emergency Rental Assistance Program (ERAP) and STAY-DC, the company has cumulatively suffered millions in uncollectible rent over the last four years.

Similar to other housing provider accounts, Company D attributes this financially distressing figure to the elongated legal process for recovering possession of a unit, which has fostered significantly higher tenant arrearages. By way of example, the company has multiple accounts delinquent by more than $40,000 and a handful that exceed $60,000 across its rent-controlled portfolio. One tenant is currently behind by more than $65,000. This individual's monthly rent is $2,065, meaning they have not paid rent in more than 31 months (over 2 and a half years) while the housing provider's motion for repossession of the unit awaits its day in court.

Ramifications for the District

These real cases provide a snapshot of a very formidable and growing problem for the District. Affordable communities across DC have seen cash flow evaporate to a point that they are no longer able to adequately cover the ongoing costs of operation. Just as the District must balance its revenues and expenses, so too must housing providers. These properties simply cannot sustain with persistent and mounting seven- and eight-figure delinquencies, restricted incomes and rampant increases in expenses.

The losses depicted above go far beyond a simple belt-tightening or "trimming of the fat." For many properties, this will quickly devolve into an inability to meet financial obligations or to provide for the repair, maintenance and improvement of properties, let alone to comply with government mandates such as Building Energy Performance Standards (BEPS) or the regulatory fines for non-compliance.

The options for housing providers who find themselves in this position are limited:

- Refinance at less-then-favorable terms. Indeed, many are unlikely to be able to overcome underwriting hurdles to obtain more financing because their cash flow is negative. It is also unlikely that they can entice additional equity investors to accept 5% returns when compared with risk-free certificate of deposits earning the same return.
- Sell to out-of-market investors who will seek to cut costs or reposition the property.
- Or, simply shut down operations.

As affordable housing providers see revenues decline, similar reductions will follow in the taxable value of those properties. This translates directly to reduced revenues for the District government, which already in the current fiscal year faces a deficit in the range of $600-$800 million.

All of these scenarios bring the threat of significant tenant displacement, increased homelessness, and a reduction in both the availability and quality of affordable housing in the District. The District has already seen affordable housing investment fall of a cliff. As non-profit and market rate affordable housing providers fail, who will step in to fill the void?

The Economic Impact of Privately-Owned and Operated Rental Housing

Privately-Owned and Operated rental housing contributes substantially to the local economy and the revenues of the District[20]:

- District of Columbia apartments and their residents contribute $19.6 billion to the local economy annually, supporting 65,800 jobs.
- The operation of these apartment homes alone contributes $1.5 billion to the local economy each year, including 1,000 jobs.
- The renovation and repair of apartments helps to preserve the District's older and more affordable units, contributing $327 million to the local economy and creating 755 jobs each year.

- Apartment construction contributes $1.6 billion to the District of Columbia's economy annually, creating 4,000 jobs.

Beyond these indirect contributions to the local economy are the far more direct payments made by multifamily rental properties to support the operations of District government, including schools, public safety, and environmental initiatives. This includes some $368.5 million in property taxes alone, not to mention revenues generated from income, personal property, sales and use, franchise, and deed recordation and transfer taxes as well as fees levied on business licenses, income and expense reporting, water and sewer, stormwater, trash collection, inspection, permitting, and special and business improvement district assessments.

As these property owners see revenues decline, similar reductions will follow in the taxable value of those properties. This translates directly to reduced revenues for the District government, which already in the current fiscal year faces a deficit in the range of $600-800 million.

Solutions

The District of Columbia faces a looming crisis as a critical segment of its housing sector teeters on the verge of financial insolvency. Carried delinquencies dating back to the outset of the pandemic continue to compound, threatening the very viability of many dedicated and market rate affordable and rent-controlled rental apartment communities.

As a result of massive court backlogs, extending hearing timelines, and legal maneuvers and automatic processes required by law resulting in repeated stays of cases, many residents remain in place after months and even years of unpaid rent. Individual arrearages totaling tens of thousands of dollars combined produce cumulative delinquencies in the tens of millions of dollars for some housing providers. This poses an existential threat to these communities, which now face the prospect of closure.

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Without immediate governmental intervention and action to alleviate the root causes of this precarious situation, many providers of affordable housing will be unable to meet their debt service. The District will suffer diminished housing stock, a reduction in affordable housing options, displacement of vulnerable low-income residents, and an economic hit that will strip the city of valuable resources to support local schools, public safety, environmental initiatives and other critical programs.

Legacy policies from the pandemic coupled with soaring interest rates and skyrocketing operating costs have created an untenable and unsustainable situation for DC housing providers serving lower income residents. Policies which were well-intended and even practical during the early stages of the pandemic to protect against a mass wave of resident displacement in the midst of a global health emergency are now producing harmful outcomes under today's very different circumstances. Having now reached a crisis point, these policies are long overdue for revisitation and revision.

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Below are just a few options for assisting dedicated and market-rate affordable and rent-controlled housing providers in order to avoid catastrophic loss of affordable housing stock.

Fixes to the Legal Process for Regaining Possession of a Unit

First and foremost, the legal process for regaining possession of a unit for nonpayment of rent is imperative. As detailed above, elongated scheduling timelines and stays of legal proceedings have fostered unsustainable levels of tenant delinquency that simply cannot be borne by any longer by housing providers. As a goal, the District should aim to restore the consideration for actions for non-payment of rent and breach of lease to its pre-pandemic timeline of 3-5 months. Delinquencies amassed over the past four years have depleted the reserves of many affordable housing providers, making it challenging to continue operating, let alone investing in the properties that DC residents call home. AOBA offers the following recommended actions to restore timely access to justice and stem the losses incurred by responsible community-based housing providers:

Add Capacity for Additional Landlord/Tenant Cases

According to News4, 13 of the 62 Superior Court judgeships are currently vacant.[21] Filling these positions will require an act of Congress, but would make a significant impact in terms of improving the efficiency of scheduling and conducting court hearings.

Prior to the COVID-19 pandemic, the courts were hearing approximately 200 Landlord/Tenant cases per day. This has dramatically decreased. Associate judges who preside over landlord/tenant cases also hear civil matters such as car crashes and medical malpractice cases. This leaves them with little capacity to hear Landlord/Tenant cases in a timely fashion. This hurts both the tenant and the housing provider. By the time the parties see their day in court, the tenant may be behind by as much as five or six months' rent, making it highly unlikely that they will be able to redeem.

Fix the ERAP Application Loophole and Increase Funding

While the ERAP program was never designed to accommodate the broad scope of one-time emergency rental assistance provided by STAY-DC, it has been a critical lifeline to many tenants as well as affordable housing providers. It is the only remaining source of funding to cover accumulated delinquencies and keep affordable housing providers afloat.

Yet with funding scarce, a resident should not be granted an automatic stay of legal proceedings if they cannot demonstrate that they owe a balance that ERAP would be able to cover, and that they are otherwise income-eligible for ERAP.

Under the current law, if residents who are delinquent in rent have submitted an application for an ERAP subsidy, the legal process against them is automatically stayed. Under current ERAP procedures, ERAP applications are only accepted quarterly. If funding is inadequate to provide funding upon the initial application or delayed, it is assumed that the application will remain open, or the resident will file an application at the next quarterly opening.

The Tenant Safe Harbor Amendment Act should be amended to eliminate the automatic stay of court proceedings for a tenant who has filed an ERAP application. Instead, Landlord/Tenant court judges should be provided the discretion to determine whether a temporary stay is in order following the issuance of a judgment. With this change, if the tenant has a pending ERAP application, the judge may stay a judgment or the execution of an eviction.

Additionally, before requesting a stay of legal proceedings for an ERAP application, a tenant should be required to provide to the court a prior year's tax return, W-2, recent pay stubs, or other proof of income eligibility to indicate that they are below the maximum income. For residents of subsidized affordable communities, compliance with the housing provider's income certification requirements should be prerequisite to eligibility for rental assistance funds.

This change would require legislative action.

Eliminate Bell Hearings

"Bell" hearings are held for cases in which a tenant disputes the amount of money they should be obligated to pay into escrow via a protective order while awaiting trial. Tenants may contest the amount to be paid into registry at any point preceding trial by raising certain defenses or alleging code violations or services not rendered by the housing provider. The tenant may raise such an assertion even after a protective order has already been issued by the court. This typically adds about two months to the legal process before a tenant ever has to make a payment into the court registry.

In order to assert such a defense, the tenant should be able to demonstrate proof of out-of-pocket costs incurred. This can easily be done during the initial hearing or at trial.

Legislation should be adopted to stipulate that at the initial hearing date, the landlord shall be entitled to the entry of a protective order, requiring payment of the full amount of the contract rent on a prospective basis into the court registry during pendency of the case. If a judgment is issued in the tenant's favor, the rent payments would be returned to the prevailing parties as determined by a Judge's decision. This would allow housing providers a more realistic chance at recovering at least some rent at the conclusion of the process (see above regarding collection challenges), and would balance the equities between parties given the significantly elongated timeline for case resolution.

This change would require a legislative action.

Confine the Scope of Continuances and Case Review

Housing providers report cases being delayed, remanded to a further initial hearing, or thrown out entirely for trivial reasons that do not in any way affect the substance of the case. In these instances, housing providers may reach the end of a roughly 2-year process only to be sent back to square one for something as inconsequential as a typographical error or text running past the margins on the court forms. Such action should occur only for reasons that may have prejudiced the case against the tenant.

This is in line with previous Court of Appeals precedent that a case should be heard on the merits, rather than on the technicality of the pleadings if the court finds in its discretion that there was no prejudice to the defendant. Discretion should be restored to the judges to grant such continuances or throw out cases only as they deem fit.

Allow for Voluntary Mediation in Place of an Initial Hearing

Allow for greater availability of pre-initial hearing voluntary mediation to be scheduled within 30 days of the service of summons and compliant to secure an eviction diversion. This would benefit both the resident and the provider of rental housing, reducing the court's workload, allowing the resident to avoid eviction, and providing the housing provider with monthly rental payments.

The mediation group would send a mediation notice to the resident, to the home provider and its attorney, and to the approved list of pro bono attorneys that includes contact information to allow residents to contact a pro bono attorney for representation and the pro bono attorneys to proactively contact the resident. The goal of the mediation for all parties would be to agree to and execute a Consent Settlement Agreement (CSA). The goal of many rental apartment providers will be to receive timely monthly rent payments from residents and a delinquency repayment schedule that is affordable and acceptable to the resident. Rental home providers are anxious to avoid the stress and hardships faced by residents who are evicted and do not want the legal expenses, vacancies without rent payments, and the costs of refurbishing apartments, marketing, qualifying new applicants, leasing the apartments, and documenting the new lease and move in. If either party fails to attend mediation or if a CSA cannot be reached, the mediator would schedule a court hearing at the next available date.

This will require a legislative action as well as court action to amend procedure.

Provide a Tax Credit for Housing Providers that Forgive Tenant Delinquencies

As established above, ERAP funding levels pale in comparison to the demand for rental assistance and the accumulated delinquencies that DC rental housing providers continue to carry.

To this end, the Council should provide a tax credit against the property's real estate tax bill in an amount equal to the amount of rent delinquency forgiven at the owner's discretion for tenants meeting the income qualifications of the ERAP program.

Relax BEPS and Other Onerous Regulatory Burdens

As established above, market-rate affordable and rent-controlled housing tends to come in the form of older Class B and C properties. These properties will require significant investments on the order of hundreds of thousands of dollars and even into the millions of dollars to comply with new building energy performance standards. Many of these communities will simply not have the ability to meet this financial obligation or to pay hefty penalties for failure to come into compliance. Additional exemptions should be granted to affordable housing providers, including rent-controlled properties.

This will require a legislative action.

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[6]WeAreApartments.org. Data for the District of Columbia, drawn from the U.S. Census Bureau's 2021 American Community Survey. The National Apartment Association and the National Multifamily Housing Council.

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[15]DC Water. Rates and Metering – Approved FY 2023 and FY 2024 Rates.

[16]DC Water. Rates and Metering – Proposed FY 2025 and FY 2026 Rates.

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