

**Written Testimony to the Committee on Economic Development
Performance Oversight Hearing for D.C. Housing Finance Agency
Friday, February 22, 2013, 10 a.m.**

**By Misty C. Thomas
Staff Attorney, Affordable Housing Initiative
Washington Legal Clinic for the Homeless**

Good morning and thank you Chairwoman Bowser and the members of this committee. My name is Misty Thomas and I am a staff attorney with the Affordable Housing Initiative at the Washington Legal Clinic for the Homeless. For the past 25 years, the Legal Clinic has advocated for people who are homeless or at risk of becoming homeless in the District of Columbia, through a unique combination of direct representation, impact litigation, policy and budget advocacy, community outreach, education and organizing. Our Affordable Housing Initiative promotes the expansion and preservation of affordable housing in the District and works with tenants and tenant associations striving to protect their existing housing.

I am before you today to discuss some concerns regarding the policy choices made by the D.C. Housing Finance Agency (DCHFA) when it deals with defaulting rental housing properties. In the last few years, DCHFA has had the unfortunate burden of having to address a handful of investments where the property owners failed to make their mortgage payments – leaving DCHFA in a lurch as the lender. While these situations are rare, the choices DCHFA makes in these situations have serious impacts on the people who live in these properties and on the dedicated, hard affordable housing stock in the District.

What choices do I mean? First - whether, how, and how often to communicate with the various stakeholders, including the tenants and tenant associations following a default. Second - whether and how to engage the tenants in the decision-making process regarding the disposition of their homes; and third - the determination of how to dispose of a defaulting HUD-backed property – whether it be through a competitive process or a foreclosure sale. I also want to discuss several negative and unintended consequences that come from using foreclosure auctions to dispose of affordable rental properties. I hope this Committee will ask DCHFA to directly address their policy positions on these issues and explain the thinking that goes behind those choices.

While I don't pretend to understand all of the complex factors that DCHFA has to consider in its role as a lender, I do know that DCHFA is not just a traditional financial institution¹, but is tasked with a mission to "increase the supply of affordable rental housing and homeownership opportunities available in the District."² So I have been flummoxed to learn that

¹ D.C. Code §42-2702.01.

² "Message from the Executive", <http://dchfa.org/DCHFAHome/MessagefromtheExecutive/tabid/106/Default.aspx>

DCHFA's preference is to use foreclosure auctions to get these properties off their books, without giving any preference to developers who might be inclined to preserve affordability, improve the conditions at the property, and work collaboratively with the residents.

The Legal Clinic has worked with tenants in at least two properties where DCHFA is making decisions about new ownership – Parkway Overlook in Ward 8 and Elsinore Courtyards in Ward 7. Both properties had project-based Section 8 contracts at one point, both had other long-term affordability requirements, both had significant conditions and habitability problems, and both have vibrant, engaged tenants who want to ensure that their homes remain affordable to them and their neighbors, despite the failings of their prior owners.

In 2007 HUD terminated the Section 8 contract due to physical conditions at Parkway Overlook and DCHFA took over as mortgagee-in-possession due to the default. DCHFA's initial plan was to hold a foreclosure auction, but later agreed to issue a RFP that would preserve affordability after extensive advocacy from the Deputy Mayor's office, WIN, and the tenant leaders, reinforced the importance of tenant voices at the table and protecting affordability. Unfortunately, there have now been three RFPs, in part because of problems we believe were caused by HUD, not DCHFA. However, very recently, yet another contract to purchase has fallen through, citing a significant funding gap. Why did this happen??

Unfortunately, I cannot tell you why it is that that contract wasn't successful, what the source of the funding gap was, whether it could have been remedied with help from DHCD or other lenders, or how we can avoid that circumstance in the future. Why? Because DCHFA keeps such information very close to the vest. The tenants, we affordable housing advocates, and you in Council, are all invested in helping these projects succeed. But without more information about why deals are not coming together and what other private or public resources could be helpful, none of us can be useful allies to DCHFA in facilitating the dispositions of these projects in ways that preserve affordability and protect the communities that live in them. Without better information sharing, we may continue to fail in preserving these failing properties.

Unfortunately, we did just recently lose the affordability protections and developer choice at Elsinore Courtyards. Despite the protestations of the tenant association, who wanted a voice in picking a new owner who was more committed to property maintenance, meaningful security, decency with the tenants, and preservation of affordability – DCHFA proceeded with an as-is foreclosure auction in September 2012 which required the bidders to be able to close on the property within 30 days of winning the auction. The agency was unwilling to lengthen that 30 day closing period and none of the affordability protections were preserved, even though there were more than 17 more years of tax credit affordability still on the property at the time of the auction.

I want to be clear to the Committee that foreclosure auctions are not required. HUD gives DCHFA at least 5 years following a default to resolve the situation – either through resolution with the current owner, a competitive bid process that considers various factors, or a foreclosure.³ This is plenty of time to come up with creative resolutions that allow preservation

³ HUD Housing Finance Agency Risk-Sharing Pilot Program, 4590.1 Chapter 10, Mortgage Default and Claims

of affordability, tenant feedback and participation, *and* still allow DCHFA to recover on its losses. And while a highest-bidder auction does help get the property off DCHFA's books most quickly, it also leads to several unintended and negative consequences.

First, it ensures the loss of most, if not all, affordability provisions upon foreclosure. Second, an auction with a short closing period has a major chilling effect on the participation of mission-driven, affordable housing developers because of i) the unpredictability of the price, ii) the limited due diligence information about the condition of the property provided, and iii) because the very short timeline to closing does not allow time to secure funding from many conventional lenders, let alone tax credits or other governmental resources focused on affordable housing. Finally, a foreclosure auction can involve a bidding war that leads to an inflated purchase price, unintentionally resulting in a new owner who has paid this higher price to buy the property, but now has less cash on hand or available financing to spend on actually renovating or improving the property that was already in disrepair. Not only does this harm the tenants, but it may diminish the value of the investment that was just made.

I strongly believe that the value of finalizing a sale for HUD and DCHFA does not and should not outweigh the value of finding the best all-around buyer who can successfully close with smart, stable, and affordability-protecting financing. It is indeed unfortunate that owners sometimes default. However, there is simply no need for the low-income D.C. residents who call those properties home to be the ones to carry the heaviest impact of a bad loan.

I hope this Committee will ask DCHFA to discuss their policy positions surrounding failing property dispositions candidly. I also want to use this hearing as a chance to ask the Council to use its influence to encourage DCHFA and other agencies like DHCD to work collaboratively at the first signs of default. Perhaps there are creative ways to line up financing that would allow for affordability-minded developers to come in and take over failing properties without resorting to a foreclosure sale and facilitate disposition of properties in a way that would allow DCHFA to repay its obligations while still prioritizing the preservation of this property in D.C.'s dwindling affordable housing stock.