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Testimony Before the District of Columbia Council
Committee on Housing
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Roundtable
“From Neglect to Respect: Raising the Standard for DC Housing”

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Introduction

Good morning, Chairperson White, and members of the Committee. My name is Patrick Cothorn, and I am a Policy Attorney at Children's Law Center. Children's Law Center believes every child should grow up with a strong foundation of family, health, and education; and live in a world free from poverty, trauma, racism, and other forms of oppression. Our more than one-hundred staff—together with DC children and families, community partners and pro bono attorneys—use the law to solve children's urgent problems today and improve the systems that will affect their lives tomorrow. Since our founding in 1996, we have reached more than 50,000 children and families directly and multiplied our impact by advocating for city-wide solutions that benefit hundreds of thousands more.

Thank you for the opportunity to testify today regarding District housing conditions, roadblocks to effective enforcement of the housing code, and potential solutions. Each year, Children's Law Center has worked with thousands of families living in rental housing with poor conditions, mold, hazardous lead-based paint, and lack of heat that cause and exacerbate children's asthma and other health concerns; and lead to more emergency room visits, missed school for children, and missed work for parents.

The District's housing code is meant to protect against these conditions by setting minimum standards that landlords must follow to maintain safe and sanitary housing for their tenants.¹ The housing code, however, is only as strong as its implementation and

enforcement. The public notice for today's roundtable noted that poor conditions abound in District housing, with landlords repeatedly violating the housing code while suffering few consequences for it,² a conclusion consistent with recent factual findings published by the Council.³

Unfortunately, Children's Law Center clients experience the worst of the District's poor housing conditions on a daily basis. They live in buildings routinely cited for code violations and rely on a code enforcement process that fails time and time again to result in remediation. Understandably frustrated, our clients tell us that requests for inspections are not worth the effort as no change will come of it. They cannot understand (and neither can we) why illegal housing conditions can be allowed to persist even after the Office of Administrative Hearings (OAH) finds that conditions violate the housing code.

The Council must act to better protect tenants, to bring trust and credibility to the enforcement process, to hold landlords accountable, and to improve the quality of the District's housing stock. Specifically, we urge the Council to take the following actions to strengthen the District's housing code enforcement infrastructure, which will in turn improve the quality of the District's housing stock:

- (1) Strengthen existing enforcement mechanisms through improved data collection and interagency collaboration;
- (2) Hold government agencies more accountable; and
- (3) Expand the use of legal and judicial processes for housing code enforcement.

The District Should Maximize Its Use of Existing Information and Existing Tools to Prompt More Meaningful Code Enforcement.

This roundtable is premised on the broken nature of the District's housing code enforcement efforts.⁴ As we recently testified

Property owners have little cause for concern from the current primary enforcement path because the current housing code enforcement system is not functioning effectively. A significant backlog of housing code cases at [OAH] has delayed resolution and diminished the impact of enforcement efforts. All too often, emergency violations—those that should warrant immediate attention—remain unaddressed for extended periods, compromising the integrity of the enforcement process. Additionally, fines assessed for violations frequently go uncollected or the Alternative Resolution Team (ART) within the Department of Buildings (DOB) frequently settles cases for substantially less than the original fine amounts. These shortcomings reduce the deterrent effect of the housing code and weaken accountability for property owners who fail to maintain safe and habitable housing.⁵

No single solution will rectify this crisis. A coordinated approach to a list of action items is necessary, and the highest-priority item is prompting better collaboration between District agencies and maximizing efficiency with existing enforcement tools and capitalizing on existing information.

To accomplish that goal, this section details three items that need attention. First, the Department of Licensing and Consumer Protection (DLCP) must collect and make available more reliable information on housing providers, so enforcement efforts brought by DOB, the Office of the Attorney General (OAG), or civil actions from tenants and their advocates, can quickly be brought against the responsible party. Second, DLCP must use that information to collaborate with DOB to deny licenses to housing providers with an

excessive number of code violations. Third, DOB must collaborate with the Department of Energy and Environment (DOEE) on the enforcement of mold and lead-based paint code violations.

DLCP Should Track Information on the Natural-Person Beneficial Owners of Entities Providing Housing to Enable More Responsive Enforcement.

Action must be taken against non-compliant landlords directly, not just the companies that hold their rental properties. If the District does not know who these individuals are and which properties they own, enforcement actions cannot be brought against them. Identifying such landlords would aid enforcement efforts brought by DOB.⁶

Further, collecting this information will help tenants and their advocates who are pursuing abatement of housing code violations through civil action. CLC represents many clients whose children face unhealthy housing conditions. Sometimes, our attorneys need to know who a landlord is as they try to reach an informal resolution of a housing concern, or as they bring a case in Housing Conditions Court. Our attorneys have repeatedly faced difficulty naming an individual as a property owner because DLCP does not require the identification of a natural person as a beneficial owner (problematic landlords often exploit this by hiding their identity behind a shell company). This prevents attempts to resolve code violations whether informally or through litigation at Housing Conditions Court.

In our recent testimony offered on B26-0287, the Housing with Integrity Amendment Act of 2025 (“Housing with Integrity Act”) (currently under consideration), we offered several potential approaches to obtaining greater information on non-compliant landlords.⁷ Those recommendations were to mirror the federal Corporate Transparency Act (CTA), to require DLCP to collect the date of birth of beneficial owners (which would make clear that natural persons must be disclosed because only they have birthdays), or to require entities to file a chart showing all levels of their corporate structure.⁸ We believe this is an urgent barrier to enforcement that must be addressed, and we would welcome the opportunity to further discuss this with the Committee.

DOB and DLCP Must Collaborate to Ensure Bad Actors Who Fail to Improve Housing Conditions Are Denied Business Licenses.

The District should further leverage the existing information collected by DOB and DLCP to prevent bad actor landlords from getting business licenses when they have large numbers of unaddressed code violations. The proposed Housing with Integrity Act, B26-0287, would deny a basic business license to landlords who allow an excessive number of health and safety code violations to pile up at their properties.⁹ The recommendations we made in our recent testimony on B26-0287 included expanding the Act to including license renewal within its scope, amending the District’s business registration requirements to prevent landlords from hiding behind shell companies, and to an expanded scope of life-safety violations to include within the trigger-procedure that would bring enforcement action.¹⁰

We urge the members of this Committee to support B26-0287, and our suggested amendments offered in testimony. Doing so will offer the District a stronger enforcement regime for the housing code using information and tools the District already has at its disposal and will provide a strong incentive for housing providers to maintain safe, sanitary, and healthy housing.

DOB and DOEE Must Coordinate More Effectively on Inspections and Enforcement Efforts to Ensure Mold and Lead-Based Paint Hazards are Remediated Promptly.

Exposure to mold and lead-based paint is a significant health concern.¹¹ One CLC client resides in an apartment with two children. For several years, the apartment continuously had mildew, water damage, and mold, and those conditions continued to persist even after two inspections found issues. Both children residing in the unit have suffered negative health effects, including frequent infections and exacerbated symptoms of asthma.

While DOB inspects residential structures for compliance with the housing and property maintenance codes,¹² DOEE inspects District structures for lead-based paint.¹³ No government agency is mandated by law to perform scientific mold testing,¹⁴ but DOEE regulates privately performed mold testing within the District.¹⁵ DOEE's website states that they will provide a visual inspection of visually apparent mold in response to a properly submitted complaint,¹⁶ but note that a visual inspection of mold is insufficient to prove or disprove the presence of mold; a scientific analysis of a sample is the only method for reliably finding mold.¹⁷

While DOB has experience in performing inspections and pursuing enforcement action at OAH, DOB does not regularly issue Notices of Infraction (NOIs) for lead-based paint or mold.¹⁸ And while DOEE will test for hazardous lead-based paint and has experience performing more scientific analysis,¹⁹ it does not perform a scientifically reliable mold test and does not have as much experience pursuing enforcement of infractions.²⁰ For an example of the effects of these shortcomings, one of our attorneys assisting a client on a lead-related matter spent months seeking assistance for her client from various District agencies, including DOEE. She was repeatedly turned away, directed to go to another agency, and had her client's concerns downplayed. Those District agencies that would engage her, including DOEE, told her that her client's lead-matter was not severe enough to warrant agency-intervention, even as they never presented a standard for when the District would intervene.

These agencies are not effectively serving the District when it comes to mold and lead-based paint. Each of them has part of the puzzle, and we believe coordination between them would enhance the District's ability to protect residents from mold and lead-based paint exposure. To this end, we ask the Council to focus on this issue during the upcoming performance oversight period and seek clarity from DOB and DOEE regarding how testing and enforcement is being performed and what efforts are being made to coordinate the work of both agencies. Further, we ask the Council, to task DOB

and DOEE with developing a strategic plan for how they can collaborate to improve outcomes for residents exposed to hazardous levels of mold or lead-based paint.

The Council Should Ensure the Nuisance Abatement Fund is Filled with the Fines DOB Collects

The District government is authorized use its special purpose nuisance abatement fund to abate the condition itself and then assess the actual cost or fair market value of that abatement to the property owner as a special assessment tax against the property.²¹ Despite the law's broad scope authorizing DOB to use the fund to "correct *any* housing code violation," the fund has not been given sufficient resources to allow DOB to make effective use of it, as it most commonly uses that resource to abate trash violations.²²

One item this Council could do that would significantly aid DOB is ensure that some or all the fines collected by DOB go to the nuisance abatement fund. Doing so would enable DOB to perform more abatements themselves without the need for additional budgetary expenditures, and the expenses of such abatement would be recoverable as through a property lien.²³ DOB reports that it performs more abatements than owners do (despite funding limitations) and does them significantly faster than owners do.²⁴ DOB is more efficient when performing abatement, as it would not need to review proof of the quality of a landlord's work, instead DOB will know whether their own work is sufficient. We ask that DOB be permitted to retain more, if not all, of the fines and liens that they recover so that the nuisance abatement fund can be expanded.

The Council Must Hold District Agencies in the Housing Space Accountable for Shortcomings.

This testimony has thus far discussed how the shortcomings of the enforcement process are allowing landlords to escape accountability, but we must ensure that District owned housing is not ignored. Because the District's public housing operator, the District of Columbia Housing Authority (DCHA), is not subject to DOB's enforcement authority the way that private landlords are, DCHA cannot be effectively held accountable if they have housing conditions just as concerning as those the bad actor landlords allow to develop.

The Council Must Ensure DCHA Provides Better Housing Conditions for District Residents.

The District's Housing Authority (DCHA) operates public housing. A significant portion of DOB's issued NOIs are at DCHA properties.²⁵ As of October 26, 2025, DOB's public dashboard shows that since FY 2018, 54,662 housing NOIs have been issued (38,972 from complaint-based inspections and 15,735 from proactive inspections). Of those, 1,127 housing violations have been issued at DCHA owned properties. That is just over two percent of all cited housing-NOIs, despite DCHA owning less than half of one percent of all multifamily housing properties in the District.²⁶ This means DCHA is incurring code violations at a rate that is at least four times what would be expected merely from their number of owned properties. However, as DOB and DCHA are both government agencies, DOB cannot collect a fine from DCHA.²⁷ DOB is left without means

to pressure DCHA to repair housing conditions, so DCHA residents are relying on DCHA to abate these items on the agency's own initiative.

Unfortunately, based on our clients' experiences, we have reason to believe DCHA needs to be held more accountable for housing conditions in their properties. One CLC client spent years living in multiple DCHA units, each with many code violations, including mold and pest infestations. Despite multiple inspections, court hearings, and communication with DCHA staff, these issues were not abated. Our client and children residing with her experienced negative health consequences from these conditions, which resulted in hospitalization for one.²⁸

Despite significant concerns regarding the quality of DCHA housing have been raised, the Council has reduced annual budgetary resources for maintaining, repairing, and improving DCHA units.²⁹ Notwithstanding the District's continuing budgetary pressures, DCHA has a responsibility to ameliorate poor housing conditions and address housing code violations in a timely fashion and should be an exemplary landlord. We therefore urge the Council to focus on this issue during oversight and ensure DCHA takes concrete steps to improve conditions in its housing. We further ask the Council to continue to invest in maintaining and improving the quality of DCHA housing, and to hold DCHA accountable for using those funds efficiently and effectively.

The Council Should Prompt DOB's and OAH's Collaboration on Enforcement Efforts by Scrutinizing the NOI Hearing Process.

A significant backlog of housing code cases at OAH (DOB's public dashboard shows that, as of October 9, 2025, 16,135 NOIs were issued. Of those, 10,780 NOIs, with a collective face value over \$31 million, remained open and are awaiting adjudication at OAH) has delayed resolution and diminished the impact of enforcement efforts.³⁰ There are many potential causes of this backlog, which could range from insufficient staffing to inefficient IT systems. We therefore urge the Council to scrutinize this issue. District residents, while not bringing cases before OAH, would benefit from the Council addressing the OAH bottleneck because that is where the District holds landlords accountable. DOB has reported that when it can move more quickly through a case, it performs better in securing favorable judgments and in fine collections.³¹ A cleared backlog and a timely resolution process will allow DOB to more effectively regulate landlords and protect tenants.

The Council Should Expand the Legal Tools Available in Housing Code Enforcement.

As the District increasingly relies on the legal system, through the NOI process and hearings at OAH, it is necessary to expand the available toolkit so that the legal system can better accommodate the rising tide of code infractions.

For example, the Council could allow certain code violations to be referred to other District authorities. If OAH were authorized to refer emergency matters to Superior Court because that court can impose a temporary restraining order (TRO) on the landlord, or a

referral process were established for OAG to seek the same; the number of cases awaiting resolution at OAH would diminish.³²

The Council could also create a scheme that would allow tenants to choose to pay rent to the court or an escrow account when the tenant claims an unabated housing code violation exists. Other states have implemented such a structure. For example, Michigan allows tenants to open an escrow account and deposit their rent into it until housing conditions are repaired.³³ District of Columbia case law is consistent with this understanding,³⁴ but District statute is silent to this issue, and District regulation does not specify how this should be approached.³⁵

A related approach is *requiring* tenants to pay their rent into an escrow account,³⁶ which could be implemented whether that requirement is imposed by statute or implemented by a court during a landlord-tenant suit.³⁷ Requiring a tenant to pay rent into an escrow account or escrow accounts could have unintended consequences and allow escrow accounts to be used against tenants. For example, a tenant requiring alternative housing because of their housing conditions would, under a mandatory-escrow approach, be required to pay rent into escrow and pay for their alternative housing.

Several states utilize a “requirement” approach, although not all require it in every instance, instead allowing a court the discretion of whether to impose the requirement upon a tenant. Missouri allows courts to order escrow accounts for tenants on individual

cases, and with determinations to be made on a case-by-case basis.³⁸ Massachusetts has a dual system—a common law one that does not consider escrow accounts and a statutory one that allows court discretion to impose escrow account requirements.³⁹ Pennsylvania similarly has a dual system—some cities within the Commonwealth are subject to a statute that requires the use of escrow accounts until a unit is brought to code,⁴⁰ while their common law allows trial court judges the discretion to impose use of an escrow account upon a tenant.⁴¹

CLC encourages the Council, to the extent it considers developing escrow account options, to follow Michigan’s model rather than those used in Missouri, Massachusetts, or Pennsylvania, because the Michigan model affords tenants the ability to choose whether escrow would be right for their situation. We also encourage the Council to supplement any escrow authority with a statute protecting tenants against retaliation for pursuing escrow,⁴² and to require that the escrowed money (following a judgement in favor of the tenant) be either used to repair the violation, or returned to the tenant, as may be appropriate.⁴³

Another possibility in expanding the legal tool kit could be to give OAG the authority to dissolve Limited Liability Companies (LLCs). OAG has the authority to dissolve corporations, but not LLCs,⁴⁴ even as other jurisdictions allow their OAG to seek judicial dissolution of LLCs.⁴⁵ Many housing providers form single-asset LLCs to hold their properties,⁴⁶ meaning many landlords escape the full extent of potential oversight

because the entities they use to hold their properties cannot be dissolved in the same manner as a corporation. For those providers who are bad actors, OAG would have more enforcement options at their disposal if they were authorized to dissolve LLCs and seek a winding-up of that LLC's assets. The threat of such an enforcement effort may provide the additional push needed for the bad actor landlords to come into compliance with the housing code on their own, which is ultimately the goal of all these recommendations.

A third approach could be to expand the scope of discretion OAH has to provide relief. OAH's authority for what may be provided within a final order is limited to imposing fines, which frequently go ignored and uncollected.⁴⁷ The enforcement process needs teeth behind it, and if fines are not going to be collected, then OAH must be given the authority to order abatement.⁴⁸ This is essential to ensure landlords perform the intended task of code enforcement—abate the violation.

Conclusion

Thank you for this opportunity to testify. We hope to work with the Council to address these issues and develop a housing code enforcement process that affords District residents and their families a healthy home. We encourage the Council to prioritize the most implementable solutions first—prompting District agencies to more effectively use their existing tools and information; and holding the agencies to the same standard of accountability as private landlords should be held. Subsequently, we believe it would be

effective for the Council to develop an expanded set of legal tools available in the housing code process rather than leaving the bulk of the work to DOB to manage.

¹ 14 D.C. MUN. REG. §§ 400 – 899.

² Robert C. White, Jr., *Notic of Public Oversight Roundtable On “From Neglect to Respect: Raising the Standard for DC Housing,”* (2025), *available at* <https://lims.dccouncil.gov/Hearings/hearings/1962>.

³ Council of the District of Columbia, Committee of the Whole, Committee Report, Report on The District’s Housing Code Inspection Process: Broken and In Need of Repair (Jan. 18, 2024), 1, *available at* <https://lims.dccouncil.gov/Hearings/hearings/211> (Committee of the Whole report listing findings that the current housing code inspection process contains “unnecessary delays,” and that violations “are not abated within the time frames required by notices of infraction.”).

⁴ Cite to roundtable announcement document.

⁵ Patrick Cothorn, CHILDREN’S LAW CENTER, Testimony Before the District of Columbia Council Committee on Public Works and Operations (Oct. 22, 2025), *available at* <https://childrenslawcenter.org/resources/testimony-housing-with-integrity-amendment-act-of-2025/>.

⁶ In addition to the difficulties in enforcement, the anonymity of landlords is also allowing some to evade utility collections, leaving their tenants to suffer the repercussion of a shut-off. Scoot Taylor, Jacob Fisher, and Kevin Roach, WIJLA.COM, *DC Water Charging Condo Owner Thousands of Dollars After Developer, HOA Disappear*, (Oct. 31, 2024), *available at* <https://wjla.com/features/i-team/washington-dc-water-bill-shut-off-code-condo-owner-help-thousands-of-dollars-payments-home-montello-virginia-holdings-avenue-northeast-napoleon-ibiezugbe-pay-buildings-hoa-fees-services>; Martin Austermuhle, THE 51ST, D.C. *Building Tenants Now Face Water Shut-Offs When Their Landlords Don’t Pay Bills*, (July 10, 2025), *available at* <https://51st.news/dc-building-renters-water-shut-offs-landlords-bills/>. *See also* D. Victoria Baranetsky, L.A. Times, *You Should Have the Right to Know Your Landlord’s Name*, (Fed. 24, 2021), *available at* <https://www.latimes.com/opinion/story/2021-02-24/rental-housing-shell-companies-landlords> (discussing this issue in a national context).

⁷ Cothorn, *supra* n. 5.

⁸ To state those in more detail, there are several ways to approach this. One is to mirror the federal Corporate Transparency Act (CTA) (Codified at 31 U.S.C. § 5336, implemented by regulation at 31 C.F.R. part 1010). The CTA gives a ready example of alternative language that is effective at including natural persons. 31 U.S.C. § 5336(a)(3). The required information (specified at 31 U.S.C. § 5336(b)(2)) that must be provided on beneficial owners is like the information required by DC, although the CTA also requires filers to disclose their date of birth—which suggests that natural persons are included. While implementing the CTA by regulation, the Department of the Treasury also understood filed entity reports must name natural persons under the CTA. *See also Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension*, 90 Fed. Reg. 13688, 13690 (Mar. 26, 2025) (an interim final rule published

by FinCEN describing the reporting requirements as they relate to individual natural persons). The specific provisions of the CTA that we recommend the Committee adopts are the CTA's use of "individual" rather than "person." Note however that FinCEN has recently narrowed the scope of the federal CTA. In March 2025, FinCEN published an interim final rule that narrowed the scope of the CTA to cover only foreign entities. *Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension*, 90 Fed. Reg. 13688 (Mar. 26, 2025). The statutory scheme does not follow that model, and were the District to adopt the statutory model, there would be no need and no requirement to adopt FinCEN's regulations—an approach New York is taking. See Sasha A. Pezenik & Luisa A. Nin Reyes, COLE SCHOTZ, P.C., *NY LLC Transparency Act*, (Oct. 7, 2025), <https://www.coleschotz.com/ny-llc-transparency-act/>.

Another approach is to amend the required disclosures within the beneficial owner report to include to include a date of birth (current requirements are at DC CODE § 29-102.01(a)(5)). One could argue that the "each person" requirement of the filing authority already requires that DLCP obtain information on each natural person who is also a beneficial owner. DC CODE § 29-102.01(a)(6). However, in practice, filers routinely omit natural persons from filings. Requiring the report to include a date-of-birth, like the CTA does, would prompt greater inclusion of natural persons within filings, as only natural persons have a date of birth.

Third, the Code could be amended to provide that, if the beneficial owners of the filing entity are or include an entity or entities, that the filing must include a chart mapping the ownership interests.

⁹ B26-0287, *Housing with Integrity Amendment Act of 2025* § 2, line 31.

¹⁰ Cothorn, *supra* n. 5 at 6, n. 19.

¹¹ Council of the District of Columbia Committee of the Whole, Report on Bill 23-132, "Residential Housing Environmental Safety Amendment Act of 2020 (December 1, 2020), p.4, *available at*: https://lms.dccouncil.gov/downloads/LIMS/41819/Committee_Report/B23-0132-Committee_Report3.pdf?Id=115313 ("Indoor mold is a threat to the health and well-being of tenants in the District, particularly tenants with asthma and other chronic respiratory conditions. This bill will strengthen the District's enforcement of indoor air quality by requiring housing code inspectors to be certified in indoor mold assessment and establishing penalties for when property owners fail to remediate indoor mold."); Bruce Perrin Lanphear, et. al., American Academy of Pediatrics Council on Environmental Health Prevention of Childhood Lead Toxicity, 138 PEDIATRICS 1, 1-5 (July 1, 2016), *available at* <https://nmtracking.doh.nm.gov/contentfile/pdf/health/poisonings/lead/PreventionofChildhoodLeadToxicity.pdf> ("very high blood lead concentrations (eg, >100 µg/dL) can cause significant overt symptoms, such as protracted vomiting and encephalopathy, and even death ... Low-level lead exposure, even at blood lead concentrations below 5 µg/dL (50 ppb), is a causal risk factor for diminished intellectual and academic abilities, higher rates of neurobehavioral disorders such as hyperactivity and attention deficits, and lower birth weight in children ... [and] can result in decrements in cognitive functions ... No effective treatments ameliorate the permanent developmental effects of lead toxicity ... No therapeutic interventions currently exist for low blood lead concentrations; therefore, prevention of exposure is paramount."

¹² DC CODE § 10-561.07(a)(4)(B).

¹³ See D.C. MUN. REGS. tit 20, § 3300 (2013) (regulations implementing the Lead Hazard Prevention and Elimination Act).

¹⁴ B23-0132, the Residential Housing Environmental Safety Amendment Act, required DCRA ensure their inspectors become licensed by DOEE. The Act also requires them to cite for mold if they find it in an inspection, but it does not require inspections for mold to be done. However, that provision was passed subject to appropriations, and remains unfunded, so it has not taken effect. DC Council Budget Office, Legislation Passed Subject to Appropriation – 2025 Quarterly Reports, 21, (Apr. 2024) *available at* <https://dccouncil.gov/wp-content/uploads/2025/04/2025-04-15-Subject-to-Funding-Legislation-quarterly-report.pdf>.

¹⁵ See D.C. MUN. REGS. tit 20, § 3300 (2013) (regulations implementing the Lead Hazard Prevention and Elimination Act).

¹⁶ Department of Energy and Environment (DOEE), Mold Information for Tenants, *available at* <https://doee.dc.gov/node/1257871>.

¹⁷ United States Department of Housing and Urban Development (HUD), Office of Public and Indian Housing (PIH), *Detecting and Addressing Hazards from Mold*, 4-14 (2019), *available at* <https://files.hudexchange.info/resources/documents/PHA-Training-Detecting-and-Addressing-Hazards-from-Mold-Course-Handbook-English.pdf> (“Mold spores are not visible to the naked eye. Not everything that looks like mold is mold.”)

¹⁸ Council of the District of Columbia Committee of the Whole, Report on Bill 23-132, “Residential Housing Environmental Safety Amendment Act of 2020 (December 1, 2020), p.3, *available at*: https://lims.dccouncil.gov/downloads/LIMS/41819/Committee_Report/B23-0132-Committee_Report3.pdf?Id=115313.

¹⁹ Inspections for mold and/or lead-based paint may only be performed by those with special training and certifications. (Inspector requirements are provided by chapters 2A (lead) and 2B (mold) of title 8 of the DC Code. Inspector and inspection standards by chapters 32 and 33 of title 20 of the D.C. Municipal Register.) Additionally, proving compliance with mold and lead-based paint require proving the absence of something, itself a more burdensome standard than proving the presence of something. (“It is well known that proving a negative is often a hopeless task.” *Pardo v. Wilson Line of Washington, Inc.*, 414 F.2d 1145, 1150 n. 9, (D.C. Cir. 1969)). This is further complicated by the nature of lead and mold contamination, which cannot always be seen with the naked eye.); Center for Disease Control (CDC), About Lead in Paint, (Mar. 26, 2025), *available at* <https://www.cdc.gov/lead-prevention/prevention/paint.html> (“A lead paint inspection tells you the lead content of every painted structural part ... of your home. However, it won't tell you whether the paint is a hazard or how you should deal with it.”).

²⁰ Makenna Osborn, CHILDREN’S LAW CENTER, Testimony Before the District of Columbia Council Committee on Transportation and the Environment, 10-12 (Feb. 15, 2025), *available at* <https://childrenslawcenter.org/wp-content/uploads/2025/02/DOEE-Performance-Oversight-2025-Childrens-Law-Center-Written-Testimony-02.21.2025.pdf>. DOEE also lacks the authority to cite a code violation for the presence of mold. 6 FY2023 DOEE Performance Oversight Responses, response to Q54(a)(i) and (ii), *available at* <https://lims.dccouncil.gov/Hearings/hearings/299>.

²¹ DC CODE 42-3131.01(a)(1).

²² Council of District of Columbia Committee of the Whole, Report on Bill 22-317, the "Department of Consumer and Regulatory Omnibus Amendment Act of 2018" (December 4, 2018), p. 8, available at: https://lims.dccouncil.gov/downloads/LIMS/38265/Committee_Report/B22-0317-CommitteeReport1.pdf?Id=62306. For a list of DOB's Abatement Fund expenditures in FY24 and FY25 so far, which were largely correcting trash and debris violations, see DOB Nuisance Abatement Fund Expenditure FY24-FY25, available at: <https://lims.dccouncil.gov/Hearings/hearings/657>.

²³ Kathy Zeisel, CHILDREN'S LAW CENTER, Testimony Before the District of Columbia Council Committee of the Whole, 9, (Feb. 16, 2022) *available at* <https://childrenslawcenter.org/resources/testimony-department-of-buildings-public-oversight-roundtable/> ("We recommend that the Council create a mechanism for some or all of the fines collected to be directed back to the agency, with a portion of those fines going to the Nuisance Abatement Fund. This is necessary because when landlords fail to remediate, it is important that tenants not be forced to live in unhealthy housing while enforcement action is pursued, which could take years in court. Instead, the agency should remediate and then place a lien on the property.").

²⁴ Department of Building Office of Strategic Code Enforcement, Fiscal Year 2024 Annual Report, 6, *available at* <https://dob.dc.gov/sites/default/files/dc/sites/dob/DOB%20FY2024%20Strategic%20Enforcement%20Report.pdf>.

²⁵ United States Department of Housing and Urban Development (HUD), District of Columbia Housing Authority (DC0001) Assessment 4-6 (2022), *available at* https://oag.dc.gov/sites/default/files/2022-10/DCReview_Final%209302022%20%281%29.pdf (noting that DCHA did not provide "... decent, safe, and sanitary housing opportunities for residents..." and the "poor condition of the housing stock."). Department of Buildings (DOB), Public Dashboard, *available at* <https://dob.dc.gov/page/agency-performance-dob..>

²⁶ Department of Energy and Environment (DOEE), Resources for Multi-Family Building Residents and Managers, *available at* <https://doee.dc.gov/page/resources-multi-family-building-residents-and-managers> (indicating that the District has over 9,000 multifamily buildings; District of Columbia Housing Authority (DCHA), List of Public Housing Properties, *available at* <https://www.dchousing.org/wordpress/public-housing/list-of-properties/> (listing 43 properties as public housing).

²⁷ This result can be reached from several approaches. One could read OAH's authority to exclude DCHA by virtue of DCHA not meeting the definition of "person" as that word is used in establishing OAH's jurisdiction. DC CODE § 2-1821.01(1), (14). Additionally, DCHA is exempt from court fees and costs, and one could consider an OAH-imposed fine to fit within that exemption. DC CODE § 6-208(a). Finally, there is a budgetary concern—that one account could acquire more budgetary resources than the Council authorized by obtaining it through fines taken from another account.

²⁸ For additional examples of CLC clients affected by mold, *see* Makenna Osborn, CHILDREN'S LAW CENTER, Testimony Before the District of Columbia Council Committee on Housing, (Feb 22, 2024), *available at* <https://childrenslawcenter.org/resources/2023-24-oversight-testimony-committee-on-housing-district-of-columbia-housing-authority/>; Makenna Osborn, CHILDREN'S LAW CENTER, Testimony Before the District of Columbia Council Committee on Housing Public Oversight Roundtable, (Oct. 26, 2023),

available at <https://childrenslawcenter.org/resources/testimony-public-oversight-roundtable-performance-of-the-district-of-columbia-housing-authority/>.

²⁹ Makenna Osborn, CHILDREN’S LAW CENTER, Testimony Before the District of Columbia Council Committee on Housing, 6-7 (May 30, 2025), available at <https://childrenslawcenter.org/wp-content/uploads/2025/06/DCHA-FY26-Budget-Hearing-Childrens-Law-Center-Written-Testimony-05.30.25.pdf>.

³⁰ Department of Buildings (DOB), Public Dashboard, available at <https://dob.dc.gov/page/agency-performance-dob> (the “Enforcement” sub-dashboard) Note that 10,780 open NOIs does not necessarily mean that OAH must hold 10,780 hearings to clear the FY25 backlog. While OAH could theoretically hear each NOI as a separate case at OAH, the court will inevitably resolve some cases without a hearing (whether they dismissed, settled, or joined with other NOIs into one hearing). Nonetheless, the sizable number of cases that are open and awaiting a hearing is a clear backlog. See also Eleni P. Christidis, Legal Aid DC, Testimony Before the District of Columbia Council Committee of the Whole, 5 (Feb. 25, 2025), available at <https://www.legalaiddc.org/media/4222/download?inline> (providing figures looking back to 2018). Council of the District of Columbia, Committee of the Whole, Committee Report, *Report on The District’s Housing Code Inspection Process: Broken and In Need of Repair* (Jan. 18, 2024), 29-30, available at <https://lims.dccouncil.gov/Hearings/hearings/211> (providing figures and analysis of a backlog of cases filed at OAH).

³¹ Department of Building Office of Strategic Code Enforcement, Fiscal Year 2024 Annual Report, 9, available at <https://dob.dc.gov/sites/default/files/dc/sites/dob/DOB%20FY2024%20Strategic%20Enforcement%20Report.pdf> (stating that because of the routine duration of OAH, “collection takes many months if not longer”); Department of Building Office of Strategic Code Enforcement, Fiscal Year 2023 Annual Report, 5, (Feb. 24, 2024) available at <https://dob.dc.gov/sites/default/files/dc/sites/dob/2024-02-26%20OSCE%20Yearly%20Enforcement%20Report.pdf> (stating that “the issuance of additional final orders [by OAH] will move the collections process further and increase recovery,” and that “when the adjudication process moves more quickly, DOB’s fine collections increase”). Additionally, DOB and OAH should collaborate to implement an effective case/docket management system with streamlined filing procedures. As it stands now, it is a laborious process for DOB to send a complete record to OAH, and the filing system is reliant on emails. Hearings are often conducted by telephone—not virtually or in person. This creates a degree of inaccessibility compared to other District Courts, such as Housing Conditions Court (which is available to view online) and that relative inaccessibility makes it difficult for the public and impacted residents to observe proceedings, whether they are personally impacted by the case or be an interested party.

³² Financial penalties are an effective means of deterrence. Vikas Kumar Jaiswal, *The Influence of Loss Aversion and Reference Points on Financial Decision-Making: A Behavioural Economics Perspective*, 4.7 INT’L J. RES. PUB. & REV. 1852 (July 2023) (describing how risk aversion and a bias to feel losses more strongly than gains, individuals are more responsive to potential negative consequences); Anne Morrison Piehl & Geoffrey Williams, NAT’L BUREAU ECON. RSCH., Working Paper 16476, *Institutional Requirements for Effective Imposition of Fines* (Oct. 2010), available at <http://www.nber.org/papers/w16476> (explaining how financial sanctions serve as an effective deterrence for most violations of law, except for the most serious criminal violations). Taking that principle to promoting housing providers to maintain healthy housing, this Act could limit the ability of bad actors to collect rent. We recommend adding a referral mechanism, allowing OAH to refer matters to landlord-tenant court. The Housing Conditions Court should then

promptly issue a show-cause order, requiring the housing provider to show cause as to why the cost of repairs should not be deducted from the affected tenant's or tenants' rent. A similar referral and show-cause process is already in place, with respect to referrals by OAH to the Superior Court about noncompliance with an OAH interlocutory order or order. DC CODE § 2-1831.09(e).

³³ Mich. Compiled Laws Annotated (MCLA) 125.530(3)-(4). The Michigan Legislature has developed a template form for tenants to provide notice of this action. Michigan Legislature, *A Practical Guide for Tenants and Landlords*, 45 available at <https://www.legislature.mi.gov/publications/tenantlandlord.pdf>. See also *id.* at 27-28 (describing the escrow process).

³⁴ *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 483 (D.C. Cir. 1970) (Holding that the imposition of such orders should be made on a "case by case basis." Note also this case was decided prior to home rule, although the D.C. Circuit was reviewing an appeal from the D.C. Court of Appeals and considered District law).

³⁵ 14 D.C. MUN. REGS., § 301 (creating an implied warranty of habitability, which is the common law source of authority relied on for the creation of escrow accounts in many jurisdictions (as discussed above), but not offering further specifics about what remedies or procedures are to be used).

³⁶ David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CAL. L. REV. 389, 432 (2011) ("Because they sharply reduce the expected value of pursuing those defenses [that a tenant should deduct some or all of their rent because of housing conditions], LPOs ["LPO" is a term for escrow accounts that tenants are required by a court to pay into by a court order; D.C. Courts also use this term when ordering this] likely are a significant contributor to the low rate of relief granted to low-income tenants ... The impact of LPOs varies dramatically depending on the wealth of the tenant. For well-to-do tenants, complying with an LPO may be a bother and an expense. For the lowest-income tenants, however, making escrow payments may sometimes be impossible and may often require foregoing other necessities. ... she or he should not be faulted for diverting those funds to meet other needs.")

³⁷ See *id.* at 426-33; Jana Ault Phillips & Carol J. Miller, *The Implied Warranty of Habitability: Is Rent Escrow the Solution or the Obstacle to Tenant's Enforcement?*, 25 CARDOZO J. EQUAL RTS. & SOC. JUST. 1, 26 ("Barriers [to the use of escrow accounts] include a low-income tenant's limited access to alternative housing and adequate representation, the judiciary's attempt to make remedies in landlord/tenant disputes fit the precedent of a breach of contract case [which the authors discuss as largely inapplicable in a previous section], and the court systems' antiquated and biased approach to landlord/tenant cases. Tenants need faster remedies. They cannot afford to pay rent in escrow and a second rent for a habitable apartment. If they continue to live in a mold- or bedbug-infested apartment while waiting for a remedy, their health will deteriorate and the social injustice continues.").

³⁸ *Kohner Prop., Inc. v. Johnson*, 553 S.W.3d 280, 285 (Mo. July 3, 2018) (en banc) (citing URLTA § 4.105(a)).

³⁹ *Boston Hous. Auth. v. Hemingway*, 293 N.E.2d 831, 843-845 (Mass. 1973); MASS GEN. LAWS ANN. 239 § 8

⁴⁰ 35 PA Stat. § 1700-1.

⁴¹ *Pugh v. Holmes*, 405 A.2d 897, 905 (Pa. 1979).

⁴² Phillips & Miller, *supra* n. 37 at 18, n. 107.

⁴³ Bruce Ackerman, 80 YALE L. J. 1093, 1194 n.129, (1971) *Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies and Income Redistribution Policy* “If the landlord fails to make the repairs, the rents are either returned to the tenants (Pa. Stat. Ann. tit. 35, § 1700-1 (Supp. 1971)), or allocated to a receiver appointed to make the repairs for him (Conn. Gen. Stat. Ann. § 19-347c (1969)), or an administrative penalty may be assessed on the withheld rent (Ill. Ann. Stat. ch. 23, (Supp. 1971)).”

⁴⁴ DC CODE tit. 29, ch. 3, subch. XII, pt. B (providing the authority to seek the dissolution of corporations).

⁴⁵ See e.g., TENN. CODE ANN. §§ 48-245-902; 48-249-617; N.H. REV. STAT. §§ 304-C:135, 304-C:134, III. Note also that while there is a set of generally applicable grounds for the Mayor to order the administrative dissolution of an entity, those grounds are only for failing to pay fees or penalties for five months after being due, failing to file a required report for five months after being due, or failing to have a registered agent for more than 60 days. DC CODE §§ 29-106.01-106.02.

⁴⁶ See James Horner, Note, *Code Dodgers: Landlord Use of LLCs and Housing Code Enforcement*, 37 YALE L. & POL’Y REV. 647 (2019).

⁴⁷ Cothorn, *supra* n. 5 at 2, n.8.

⁴⁸ While OAH has the authority to issue “interlocutory orders,” that term does not include final orders, (DC CODE § 2-1831.01(10)), and so likely means that OAH has only the authority to issue a TRO or a preliminary injunction for the duration of the case, but not to include injunctive relief as an item within an issued final order. Expanding OAH’s authority to specifically allow injunctive relief as a permissible part of a final order, and not merely an interlocutory one, better positions OAH to address lingering code violations. The District’s Housing Code provides an express written policy consistent with this understanding, a policy “in favor of speedy abatement of the public nuisances ... if necessary, by preliminary and permanent injunction issued by Courts of competent jurisdiction.” 14 D.C. MUN. REG. § 101.5.