

## FORMING A TENANT ASSOCIATION

Tenants in the District of Columbia are entitled under the rent control law to form tenant associations in their apartment buildings. TENAC strongly urges that they do so, and stands ready to assist them in that undertaking. We have helped form tenant associations in scores of buildings all over the city, both on-site and through our advisory services. It is TENAC's considered belief that a rental apartment building without a tenant association, sooner or later, is a sitting duck for arbitrary treatment or abuse by landlords, developers, speculators, or political opportunists. There are a host of problems and considerations tenants may encounter at one time or another while living in an apartment building. They include, but are by no means limited to: building maintenance problems such as heat, air conditioning, hot water, elevator breakdowns, etc.; housing code infractions such as peeling paint, plumbing leaks, safety and security problems, and rodent and bug infestation; questionable rent increases, hardship rent increases, capital improvement rent increases; building sale or conversion and right of first refusal of tenants to buy.

It is not difficult to form a tenant association. The key ingredients are tenant interest and participation. Although we believe tenant associations should be formed as a matter of course in an apartment building, associations are often formed in response to a specific problem or crisis tenants may confront in their building. That is a perfectly good reason to organize; the important thing is that the association should continue once the problem or crisis is resolved. It is not necessary to engage the services of a lawyer to form a tenant association, incorporated or unincorporated. If a competent lawyer offers to do so pro bono or for a modest sum, fine; otherwise, by following the instructions below, you can easily do it yourself.

One of the great ironies of our time is that in a day and age of organization, a time when the workplace is organized, recreation and education are organized, political life and community involvement are organized, when it comes to protecting the roof over one's head, i.e., forming a tenant association where one lives, is often entirely overlooked. The key thing to remember is that in a building with a tenant association, your interests stand an excellent chance of being considered first, whereas without one, it is very likely they will be considered last. There are three critically important things a tenant association will confer on residents of an apartment building: (1) protection, (2) clout, and (3) a sense of community.

## PROTECTION

As the saying goes in labor unions, "in unity there is strength"; the same is true of tenant associations. Strength equals protection. When trouble strikes, it's nice to know that there is another door one can knock on, other than one marked "resident manager," "property manager;" "rental agent," or "landlord." When personal safety, security, or managerial highhandedness are issues, it's nice to know you don't stand alone, but have a powerful organized ally, a tenant association representing all who live in the building.

## CLOUT

When controversies, disagreements, or impasses occur between a tenant and apartment building authorities, managers or owners, one might or might not achieve a just resolution dealing with them one on one. One also stands an excellent chance of being "stonewalled," however. A much more successful and speedy outcome is far more likely when one is represented by a tenant association, especially if management or owners become arbitrary or unreasonable, which is often the case. Tenant association clout extends far beyond one's domicile, moreover. Politically, they are important. Their influence extends all the way from Advisory Neighborhood Commissions (ANC's) to the Council, to the Mayor's Office, and elsewhere, especially in an election year. The proof of that is very simple. When candidates are running for office, invite them to your building. They'll come! Tenant association clout extends to the city's relevant administrative tribunals, as well. I refer specifically to the DCRA, the Rent Administrator, the Rental Housing Commission, and Landlord-Tenant Court, to cite only a few.

## COMMUNITY

In a large city, where anonymity and anomie are everywhere present, it is not unusual for tenants not to know who lives next door to them, let alone down the hall. A tenant association creates a sense of community in a building. We are not talking about "enforced togetherness" or "chumminess." Certainly we all want our privacy and space. An association in no way impinges on that, but in fact enhances it, by increasing building safety and security. It is especially important, however, to know that in case of emergency, there is something else out there, when management or one's next door neighbor may be a million miles away. This is particularly important for elderly or infirm residents. Associations often generate a little sociability and recreation in a building, as well, by holding occasional social events, such as a Christmas party, or other observance.

## FORMING THE ASSOCIATION

First, notify all tenants in the building of a proposal to form a tenant association. Second, schedule a vote on forming the association, then, assuming approval, elect the Board of Directors. A minimum of three directors is required. Both the vote on forming the association and director selection can be done at the same session. In fact, that procedure is recommended, since multiple convening of tenants can be time consuming and annoying. Next decide on what form of tenant association leadership you want. You may choose simply a board of directors with a chairman, or constitutional officers-- president, vice president, secretary, and treasurer, or a combination of both. Most buildings choose the latter. Associations can be either incorporated or unincorporated, but officers are required for an incorporated association. Both are recognized under law. Both require by-laws, but an incorporated tenant association also requires articles of incorporation.

## INCORPORATION OR NOT?

TENAC strongly recommends that tenant associations incorporate as a non-profit organization under District law. Neither of the necessary documents--articles or by-laws--are complicated, and sample copies of both may be obtained upon request. Sample Articles of incorporation and filing instructions are available on the DCRA website, [www.dkra.dc.gov](http://www.dkra.dc.gov). Articles of incorporation set forth such things as the name, purpose, directors, method of selection, provisions for liquidation, and list of incorporators (minimum of three) of the association. One person must also serve as the registered agent of the association. Don't be put off by the sound of the title; it is a simple role, but a necessary formality. The role of the registered agent is to receive official correspondence on behalf of the association. A signed consent to act as registered agent form must be submitted with each set of Articles of incorporation. Articles of incorporation must be typed on plain bond (non-letterhead) paper and must be notarized. Two original signed sets of articles must be submitted to the District Corporations Division, Business Regulation Administration, Department of Consumer and Regulatory Affairs (DCRA) located at 941 North Capital Street, NE, a short walk from Union Station. Incorporation (as a non-profit organization) costs \$75, lasts for two years, and is automatically renewable thereafter every two years for \$75. By-laws, while necessary, need not be submitted to the Office of Incorporation, and may be prepared subsequent to incorporation. By-laws are important. They are necessary to conduct the business of the association. By-laws set the rules for election of directors and officers, membership, meetings, voting procedures, etc. They should be completed as soon as possible, however, to insure a smooth functioning organization.

There are several important reasons to incorporate. First, it confers a greater measure of standing and clout on an association by signifying a greater seriousness of purpose and intention to function long-term, and therefore makes the longevity of the organization more likely. Second, incorporation limits legal liabilities to the corporation and not to individuals. Third, incorporation is recommended to negotiate with landlords regarding conversion of rental buildings to other use. Landlords must secure the vote of a majority of tenants in order to change the status of a rental building. If a building has no tenant association, DCRA will conduct the election regarding conversion approval or disapproval. A simple majority vote (51%) determines the outcome. In the sale of a building, however, incorporation is imperative. Tenants have the right of first refusal to buy the building, but only if they are part of an incorporated tenant association.

#### TREASURY

Tenant associations cost money (but not much), so you should have a treasury (but not large). If you choose to incorporate, which you should, you will need \$75 to pay the incorporation fee, right up front. Other expenses will be minor: xerox, postage, letter-head stationary, refreshments if desired, and possible party expenses if you choose to have one. In addition, a "rainy day" fund is recommended in case you need a legal opinion at some point, or engage a lawyer for any reason. Dues are one way to raise money; \$10 per year per head appears to be the going rate. That is a very modest sum these days; certainly dues should not be less than \$5. In addition, you can request some "start-up" money contributions at your first meeting(s), pass the hat, etc. If the need should arise, you can always hold a fund-raiser, such as a bake sale or a flea market, etc. In order to open a bank account in the name of the association, you will first need an employer Identification Number (EIN). To get an EIN, complete Form SS-4 available on the IRS website, [www.irs.gov](http://www.irs.gov).

#### TENANT ASSOCIATION MEETINGS

The association should meet on a regular basis, but not too often. You don't want to tax the time and patience of members. Have an agenda. Don't just meet to meet. One permanent agenda item should be "Whatever else is on your mind." Meetings don't have to be all business. Have some fun as well. Have an occasional party or picnic, encourage some socializing. Show the flag. Invite the power structure--your ANC member or chair, your councilmember, don't hesitate even to invite the mayor. They'll come, (maybe not the mayor), especially in an election year, like right now (2004). Invite the authorities (police/fire, etc.), especially if you have safety and/or security concerns. The fact is that as an incorporated tenant association you will command respect, so don't hesitate to exercise that power.

CITY-WIDE PLUSES AND MINUSES FOR TENANTS

On the plus side of the ledger, we have perhaps the strongest rent control law in the nation, a model statute often used as a basis for rent control statutes in other jurisdictions across the nation. We have some Council support, but not nearly enough. This is an election year, however, and with effective political lobbying, we can increase support on the Council, which is especially important, since the rent control law comes up for renewal in 2005. We have a powerful, outspoken ally in Delegate to Congress, Eleanor Holmes Norton, a great champion of tenants and rent control. Since tenants comprise two-thirds of the population of the city, we have enormous potential political clout, if we effectively exercise it, especially in a political year like this one. For legal assistance, tenants have a great resource in the David A. Clarke School of Law at UDC, which has the only landlord-tenant clinic in the city. Other university laws schools offer some pro bono or modest fee legal assistance, as well.

On the minus side of the ledger, we have a mayor who is truly indifferent to rent control. In addition, the developer-landlord lobby is one of the richest and most powerful in the nation. The Apartment and Office Building Association (AOBA), which represents them has great influence with the mayor and the Council. The rent control law is being seriously violated and has some glaring loopholes, which must be corrected. Skyrocketing rents, absurd rent ceilings, harassment of tenant associations, and infringement of tenants' right of first refusal to buy are only a few of the major problems currently facing tenants. Tenant apathy is a constant problem. Tenants need to organize, lobby, and vote. Tenants also need a cadre of lawyers, willing to work on a pro bono or modest fee basis to assist in court, and before the Rental Housing Commission in landlord-tenant disputes.

TENAC stands ready to assist tenants in all these matters as we have been doing for many years. TENAC is leading the fight to save rent control next year. Please let us know if you are willing to do some volunteer work for us. Please make a donation if you can. TENAC works tirelessly all year round for tenants; we could use a little help in return.

**\*This document was reviewed and approved for legal accuracy by Aaron O'Toole of the Law Firm Klein Hornig LLP, formerly of the Harrison Institute.**

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