GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Housing and Community Development

Bill 23-601, the "Condominium Warranty Amendment Act of 2020"
Bill 23-623, the "Condominium Warranty Claims Clarification Amendment Act of 2020"
Bill 23-568, the "Home Purchase Assistance Amendment Act of 2019"
Bill 23-0696, the "Limited Equity Cooperative Advisory Council Act of 2020″

Testimony of
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Council of the District of Columbia
The Honorable Anita Bonds, Chairperson

Virtual Hearing via Zoom

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Good afternoon, Chairperson Bonds and members of the Committee on Housing and Neighborhood Revitalization. I am Polly Donaldson, Director of the Department of Housing and Community Development (DHCD). I am pleased to appear before you to testify on behalf of Mayor Bowser on the four bills under discussion today.

It is DHCD's mission to produce and preserve affordable housing for low- and moderate-income residents and revitalize underserved neighborhoods in the District of Columbia. In fulfilling its mission, DHCD oversees the Condominium registration and warranty process and administers the Home Purchase Assistance Program.

Before turning to the bills that are the subject of this hearing, I want to say it is a good feeling to be before you to discuss the regular policy and operations of the Department. This is a needed reminder that we will overcome our current challenges and build back better. As you know, the last few months we have been, together, focused on addressing the current and the expected impact of the COVID-19 public health emergency on District residents.

I would like to begin my discussion of the legislation before you with Bill 23-623, the "Condominium Warranty Claims Clarification Amendment Act of 2020" which was introduced on behalf of the Mayor in January along with emergency and temporary versions of this bill, which were considered and passed by the Council in February and March.

At the outset, I would like to recognize that Bill 22-622, the "Condominium Warranty Claims Clarification Temporary Amendment Act," which was amended after fruitful cooperation with your committee staff and advocates for both claimants and declarants, represents an improvement on Bill 23-623, as introduced. I am therefore testifying in support of making the reforms from that temporary bill permanent and will refer primarily to that version of the legislation.

The purpose of this legislation is to simplify the claims process and eliminate the growing frustration participants had previously experienced in resolving disputes within the program.

The temporary act establishes clear timelines for the actions of the claimant (meaning the condominium owner or association), the declarant (meaning the

developer), and the Mayor, whose authority has been delegated to DHCD, to resolve warranty disputes. Prior to this, the statute lacked this clarity and as a result both claimants and declarants often viewed a claim made to the Mayor as the primary means to address structural defects, pay for repairs, and honor the warranty. This view led to a number of inefficient outcomes. At a fundamental level, this view could obscure the developer's responsibility to address all claims, but also often led owners and associations to make a claim to the Mayor before the developer had had an explicit opportunity to address the claim and put the Mayor in the position of brokering a settlement. Second, this led to an unnecessary and time-consuming back-and-forth between the claimants, the Department, and the developer to perfect a claim, delaying resolution. Third, at times it led to the developer "granting" funds from the security with the potential for the security to be significantly diminished before the true extent of the defects were known.

The temporary act establishes in statute the process for the claimant to make a claim directly to the developer and how the Mayor is to be noticed of that claim in order to reserve the security until the case is resolved. Along with clear timelines, the temporary legislation also clarifies the process for what occurs if the developer's warranty is not honored to the satisfaction of the claimant within the allotted time, how the individual owner or association can subsequently make a claim against the security held by the Mayor, and the process for the Mayor to reach her determination. This clarity diminishes the need for the back-and-forth once the developer has had an opportunity to respond and a claim is made to the mayor.

The temporary act also establishes how once a determination is made by the Mayor it can be disputed by one of the parties and referred to the Office of Administrative Hearings (OAH) for adjudication. The Office of Administrative Hearings Jurisdiction Expansion Amendment Act of 2017 enabled warranty claims to be referred to OAH, and the temporary legislation created the necessary process to make these referrals.

The temporary act clarifies further that rather than hearing an appeal based on the narrower technical evidence the Mayor uses in her administrative determination of the validity of a claim, the OAH judge may conduct a new investigation, hearing additional evidence from both sides in reaching a decision. Previously, the lack of clarity around the appeals process in the statute could serve as the basis to dispute the process, initiating a further back-and-forth between the claimant, the Mayor and the developer, dragging out the resolution of the case still further.

These simple clarifications are already having a dramatic and positive impact on the program. As a result of the emergency and temporary acts, DHCD has already referred five previously stalled cases to the Office of Administrative Hearings and no longer has a backlog of cases seeking resolution. Moreover, in the past five months the number of complaints referred to the Department by Council staff has diminished dramatically, one clear indication of improving satisfaction with the program. Our Conversions and Sales Division also reports that indications are that condominium owners and developers have been much more proactive in resolving disputes since the temporary act came into effect, which they ascribe to the clear process, limiting unproductive negotiations that previously could stall any resolution.

In summary, given our experience of the last five months, I encourage the Council to make the reforms in the temporary act permanent through an amended Bill 23-623.

I now turn to Bill 23-601, the "Condominium Warranty Amendment Act of 2020." This bill would make more significant changes to the condominium warranty process in the District.

Introduced prior to the temporary act (Bill 23-622) discussed above and the Bill that is the subject of this hearing (Bill 23-623), this bill appears motivated by many of the same concerns about the previous process. The approach is not entirely similar, however, and the administration is very concerned with the proposal at the core of this legislation, namely, moving the condominium warranty process to the Department of Consumer and Regulatory Affairs (DCRA) by statute. We believe this would not further the bill's objectives and would only further splinter the registration and regulation of condominiums within District government, serving no-one's interest.

As an affordable housing agency that finances and administers new construction and rehabilitation residential projects, DHCD is well equipped to carry out the administrative tasks foreseen by this bill. Indeed, DHCD already undertakes some variation of most of these tasks in its current administration of the program. What the process has historically lacked was clarity, particularly for adjudication of disputed cases, and as discussed above, that can be best addressed by making the reforms in the temporary bill permanent.

More fundamentally, however, under the current statute the responsibility for determining where responsibilities will be situated lies with the Mayor and we continue to believe that the Mayor is best positioned now and in the future, as government structures and technologies change, to determine which agency (or agencies) is best suited to serve condominiums and carry out the requirements of the warranty claims process.

And that leads to another concern, it is unclear how the provisions of B23-601 would affect the appeal and dispute resolution process recently improved by the temporary statute. The dispute resolution it relies on mirrors the old process and does not leverage the opportunities provided by the passage of the Office of Administrative Hearings Jurisdiction Expansion Amendment Act of 2017.

Bill 23-601 also does not provide the level of clarity that the temporary legislation does regarding how the declarant is to be informed of the notice of defect and, having received the notice, how the declarant satisfactorily responds to the claimant and the Mayor. In this way, Bill 23-601 perpetuates the role of the responsible agency as the intermediary for all steps of the claims process. As described above these elements of the previous process discouraged good faith negotiation and created unnecessary back-and-forth in resolving claims.

These represent our major concerns with the bill and it is our position that implementing this bill as proposed would be a significant step backward from where we are today. As discussed above the "Condominium Warranty Claims Clarification Temporary Amendment Act of 2020" has already adequately addressed these issues.

My staff and I would, however, welcome the opportunity to work with your staff and all the interested parties to consider the remaining proposed reforms in the bill.

For example, the Bill 23-601 expands the definition of the defects that can be claimed under the warranty to include <u>any</u> variation from the building code or limitation on intended use requiring repair, renovation, restoration, or replacement. We are aware that the current definition has long drawn calls for reform and we are sympathetic that strictly limiting claims to structural defects, as the current statutory definition is interpreted, can seem arbitrary in many cases, particularly in cases where multiple defects individually fail to meet the definition of "structural," but taken together they seriously and unquestionably degrade the habitability of the property.

Still, the proposed definition in this bill appears likely to prove too broad, greatly increasing the grounds for making a claim to include a very broad set of defects and leading households and condominium associations to seek redress through the warranty claims process for minor items that were obvious prior to purchase and should have been considered in the purchase decision. Implementing the proposed definitions would greatly tax the District's administration of the program and the interest of developers in developing condominiums, an important entry point into homeownership in the District. We can work with your staff and interested stakeholders to develop a definition of defect that covers a broader range of serious and hidden defects but does not make all units potentially subject to claims.

Another, area of joint interest is the determination of construction costs and adjusting the size of the security posted with the Mayor as the project is completed. DHCD is presented with an estimated construction budget that we use to determine the amount of the warranty security prior to registering the condominium and is dependent on the developer for updating those costs, with inconsistent results. B23-601 proposes a process to ensure the developer posts adequate warranty security that we are also exploring this as a policy matter.

In summary, the Bowser administration is committed to improving the regulatory environment for our condominium and cooperative owners and though we have technical concerns we stand ready to work with you on these and other elements in this bill such as publishing a record of the securities held by the District, pending claims, and claims paid; sanctions for bad actors; and acceptable forms for the security posted with the Mayor. Whether through legislation, regulation or improved administration of the program, we look forward to working with you to develop policies and necessary legislation addressing these matters in a balanced way.

I now turn to Bill 23-0696, the "Limited Equity Cooperative Advisory Council Act of 2020." DHCD shares concerns about the financial stability and governance strength of our existing and future limited equity cooperative communities. Financial and governance concerns about specific low-income cooperative and condominium communities are brought to my attention with an unfortunate regularity given the amazing potential these "common interest communities" otherwise can have for providing affordable homes to residents. Not only has DHCD sought to address these individual concerns as they arise, we have also contracted with the National Center for Housing Management to develop a course

to educate common interest community boards and owners specifically, on how to manage and govern their communities. That course, consisting of on-line training and a virtual (for the moment) in-person class and certification, will be offered starting this fall.

We were also happy to participate in the Limited Equity Task Force created by the DC Act 22-338, the "Limited-Equity Cooperative Task Force Act of 2018," which Bill 23-0696 would essentially make permanent to report semiannually on the state of LEC's in the city. We would be happy to participate in this effort.

Now I turn away from the Department's regulation and assistance of cooperatives to our support for homeownership more broadly and Bill 23-568, the "Home Purchase Assistance Amendment Act of 2019." DHCD oversees the HPAP program which it administers with the assistance of the DC Housing Finance Agency (DCHFA) and the Greater Washington Urban League. This is the District's primary vehicle for helping low and moderate households finance a home purchase, particularly those historically excluded from home ownership.

To date for FY'20 the HPAP program has assisted 310 District residents become first time homeowners. Out of the 310 loans closed, 158 of the first-time homeowners were DC Government employees, who also received additional EAHP assistance.

I would like to start with the proposed repair program.

First, we have a few technical points. HPAP borrowers procure home inspections in the private market and the terms "HPAP inspection" and "HPAP inspectors" referenced in the legislation have no specific meaning. Second, under a pilot, HPAP can already be paired with a Streamline 203K federal mortgage meant to assist with immediate repairs and renovations. As I will discuss later in my testimony, this product is the Federal Housing Administration (FHA) product that most closely matches the objectives of the program.

Moving to the program itself, I want to raise our concern that even under the best of circumstances the timelines and project budgets would be difficult to perform under this bill. As proposed, however, the contract for the repairs would have to be signed and the initial deposit paid at the closing itself. Negotiating this on a new home about which you have limited information prior to closing would be hard for most homeowners, but for first-time homeowners, this is likely the first

such substantial home repair project they have undertaken. Without significant counseling and support this will open new homeowners up to be taken advantage of as they attempt to buy their first home and contract to have the necessary work completed simultaneously. It also is likely to increase their costs if they must pay for additional lodging elsewhere as they delay move in or vacate the home to complete the repairs.

And then at the end of the process, if the work is not completed, the unspent funds return to the HPAP program, but it is unclear what happens to the initial installment paid to the contractor at closing, and the legislation explicitly says the resident is left owning a house which, by implication, is lacking the needed repairs indicated by the home inspection. This may be dangerous, leaving the house uninhabitable, and in any case almost certainly diminish the value of the home and the financial health of the homeowner.

I will also note that with or without more reasonable timelines, compliance regimes, and assistance levels, to fully implement this program and assure the funds are used to help the greatest number of District residents, additional inspectors will be needed to determine if the proposed work is in fact necessary, of the necessary quality, and that household and program resources were sufficient to complete it. And those inspectors will be needed again to determine the work was appropriately completed before any final payment can be made.

Under the 203k program many of these functions are carried out by the lender, who is approved for the program, and they are compensated within the structure of the product, and with a cost to the borrower, for these services. This legislation does not appear to lay out a similar process for the District program to be linked to the 203k program or to train or compensate lenders for administering the program on our behalf.

It is worth reiterating that the mission of HPAP, and many of the federal funding programs it utilizes, traditionally has been to provide mortgage and down payment *assistance* so that District residents who are ready to buy a home for the first-time can to purchase "decent, safe, and sanitary" homes in the District that they will have a high likelihood of being able to sustain financially as their primary residence for the long term. We therefore ask that you reconsider the proposed repair program. While we recognize that homes with identified problems are often cheaper and may appear a better value to a first-time homeowner with a confidence in their ability to complete the repairs, long experience tells us that these bets often

do not pay off. HPAP should instead continue to strive to place households in homes that are move-in ready and capable of immediately contributing to the new homeowner's wellbeing. For borrowers that choose it and qualify, the pilot pairing the Streamline 203k product has been used to address the more modest repairs to address code violations that purchasers may reasonably confront prior to occupancy or shortly thereafter. I would look forward to discussing further with you the pros and cons of altering the HPAP program to encourage first-time homeowners to take on larger structural renovation projects through our HPAP program using a local grant program or the full 203k FHA product.

In this vein, I now turn to the proposal in this legislation to increase the minimum and maximum assistance amounts for the program. We stand with the Council in supporting the HPAP program and understand that the terms of the program need to be assessed periodically to assure its continued success. If this hearing were held in March, as originally planned, I think I could have been more supportive of this effort to increase the buying power of the District's first-time homeowners. Given the emerging challenges for the District's budget and the real estate market from the COVID-19 public health emergency, however, today, I will urge restraint. I ask that we defer this decision to increase HPAP loan amounts to a future date in which this current crisis is behind us. In recent months the prices of attached and multifamily homes for purchase have moderated considerably. While single family sales prices are up, this is due to activity at the high end of the market and sales volumes and homes on the market across the market remain uncharacteristically low. It is hard at this moment to know how the program can be best updated to better serve District residents over the next few years.

On a positive note, as detailed above, the HPAP program continues to be successful in this environment and under its current parameters. With the funding you provided in the FY21 budget, we are on track to assist another strong class of first-time homeowners this year despite the challenges.

This does seem to be a good time to discuss the Mayor Bowser's undaunted commitment to increase the supply of housing in the District and to the more equitable distribution of housing opportunities across the city. In addition to the types of proposals we have discussed today to assist current residents find existing housing, I would very much like to promote the opportunities we have to increase the supply of affordable for-sale housing and in particular programs that give low income households new homeownership opportunities in communities where they have traditionally been excluded such as West-of-the-Park or Capitol Hill.

Thank you, Chairperson Bonds and the members of the committee for the opportunity to testify today. Thank you again for being partners with us as we face these unprecedented challenges. This concludes my testimony and I would now be happy to explore these matters with you and answer any questions you may have.