

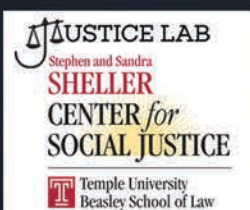


Philadelphia Rental Assistance Demonstration Program

# ADVOCACY GUIDE

**Solutions for Ensuring Tenant Rights and  
Long Term Affordability in RAD Conversions**

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## JUSTICE LAB at the SELLER CENTER FOR SOCIAL JUSTICE TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW

The Sheller Center for Social Justice at Temple University Beasley School of Law, created in 2013 by a generous gift from Stephen and Sandy Sheller, is a hub for social justice inquiry and advocacy. The Center's faculty, staff, and affiliated faculty work with law students, the Law School's other legal clinics and experiential programs, others at the University, community organizations, and external partners to seek justice for disadvantaged populations in Philadelphia and across Pennsylvania.

Justice Lab is a clinic at the Sheller Center for Social Justice at Temple University Beasley School of Law. Justice Lab represents client organizations (including community groups, nonprofit organizations, and governmental agencies) in a range of systemic advocacy matters. Students develop and advance policy campaigns, design and pilot legal services and access to justice programs, draft legislation and provide legislative advocacy tools, and act as problem solvers and strategic planners. Through this social justice advocacy, Justice Lab students reflect on the complex social and political aspects of legal problems and develop expertise in finding creative solutions to those problems.

## COMMUNITY LEGAL SERVICES

In 1966, The Philadelphia Bar Association established Community Legal Services (CLS) as an independent 501(c)(3) organization to provide free legal services, in civil matters, to low income Philadelphians. Since its founding, CLS has served more than one million clients who could not afford to pay for legal representation and who would have faced a variety of devastating ends without dedicated, knowledgeable attorneys on their side. CLS also engages in a range of systemic policy issues affecting low income Philadelphians. The Housing Unit of CLS represents private, public, and subsidized housing tenants in matters involving eviction, illegal lockouts, and substandard housing. The unit also uses systems advocacy and litigation to address issues ranging from lead paint elimination, to federal housing policy changes, to tenant eviction laws.

## ACKNOWLEDGMENTS

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## ACRONYMS AND ABBREVIATIONS

HUD: U.S. Department of Housing and Urban Development

RAD: Rental Assistance Demonstration

PBV: Project-Based Vouchers

PBRA: Project-Based Rental Assistance

TPV: Tenant Protection Voucher

PHA: Philadelphia Housing Authority (in this report, public housing agency will be used in its unabbreviated form)

MTW: Moving To Work Demonstration

CHAP: Commitment to Enter into a Housing Assistance Payment

HAP: Housing Assistance Payment

URA: Uniform Relocation Act

LIHTC: Low Income Housing Tax Credit

CLS: Community Legal Services

RAB: Resident Advisory Board

RFP: Request for Proposals

LTC: Lender Temporary Custodian

PRO: Permanent Replacement Owner

## **INTRODUCTION: RAD IN PHILADELPHIA**

The Rental Assistance Demonstration Program (RAD) is a new program from the United States Department of Housing and Urban Development (HUD) designed to address the financial crisis in public housing. By infusing private money into the public housing market, RAD allows local housing agencies to renovate and reconstruct dilapidated public housing structures.

RAD's federal regulatory scheme is a guideline and the program gives local housing agencies discretion in implementation. As a result, tenants in RAD properties risk losing basic rights that protect them in the short and long term. In addition, because public housing agencies and developers hold the most information about a planned RAD conversion, tenants may be the least informed, least heard, and least represented party. If the purpose of RAD is the creation and maintenance of high quality housing for low income families, then RAD should not allow any exclusion or reduction of tenant rights for those families. For RAD to realize its full potential, quality, affordable housing must be partnered with strong and lasting protection of tenant rights.

RAD implementation is in its early stages in Philadelphia and it is crucial for public housing residents and all Philadelphians that these efforts protect tenant rights and affordable housing. There are many ways advocates and stakeholders can work together to reach this goal. This guide begins with an explanation of RAD and its governing documents. It then discusses strategies that advocates in other cities have used to secure tenant rights and long term affordability through RAD. It concludes with recommended solutions for advocacy and implementation of RAD in Philadelphia. We propose strategies for Philadelphia to preserve tenant rights and affordable housing in RAD conversions that include: 1) a memorandum of understanding, 2) long term ground leases, 3) tenant lease addenda, 4) developer selection processes, and 5) legislative action.

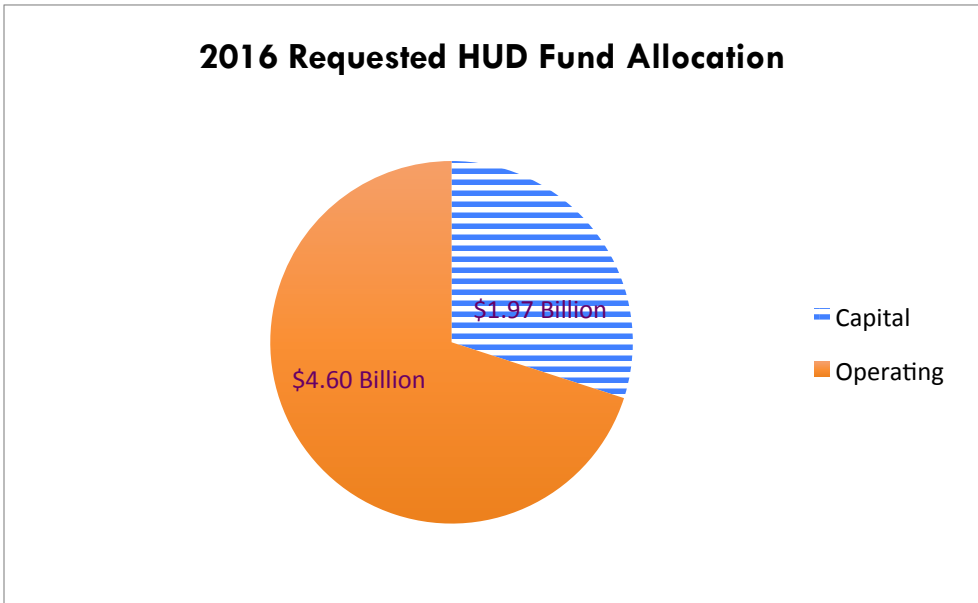
# CHAPTER 1: AFFORDABLE HOUSING AND HUD PROGRAMS

## History and Finances of HUD<sup>1</sup>

Any discussion of affordable housing begins in the 1930s with the inception of public housing as part of the New Deal. Public housing was meant to aid families affected by the Great Depression and to address the growing number of urban slums. Established by the Housing and Urban Development Act of 1937, public housing was funded by the federal government and constructed, owned, and operated by states and localities. Originally, federal allocation paid only for the construction of a public housing development, and rents were structured to cover operating costs, so ongoing federal subsidization was unnecessary.

The Housing Act of 1949 shifted the focus of public housing away from middle-class families who were temporarily affected by the Great Depression, to the lowest income families who lived in the poorest urban neighborhoods. This transition marks a critical turning point in public housing. Where the original residents in public housing developments could afford to pay rents necessary to cover operating costs of the building, the new lower income residents could not afford such rents. As a result, in 1969, Congress limited public housing rents to twenty-five percent of a resident’s household income.<sup>2</sup>

Following this shift, public housing became dependent on three primary funding sources: tenant revenue (i.e. rents), the now necessary federal operating subsidy, and federal capital funds. The federal operating subsidy covered the deficiency in operating costs created by the new rent levels, while federal capital funds paid for necessary maintenance and improvements. Presently, tenants pay no more than thirty percent of their household income in rent.<sup>3</sup> As of 2014, the revenue from tenant rent payments covered about forty percent of the operating costs of public housing.

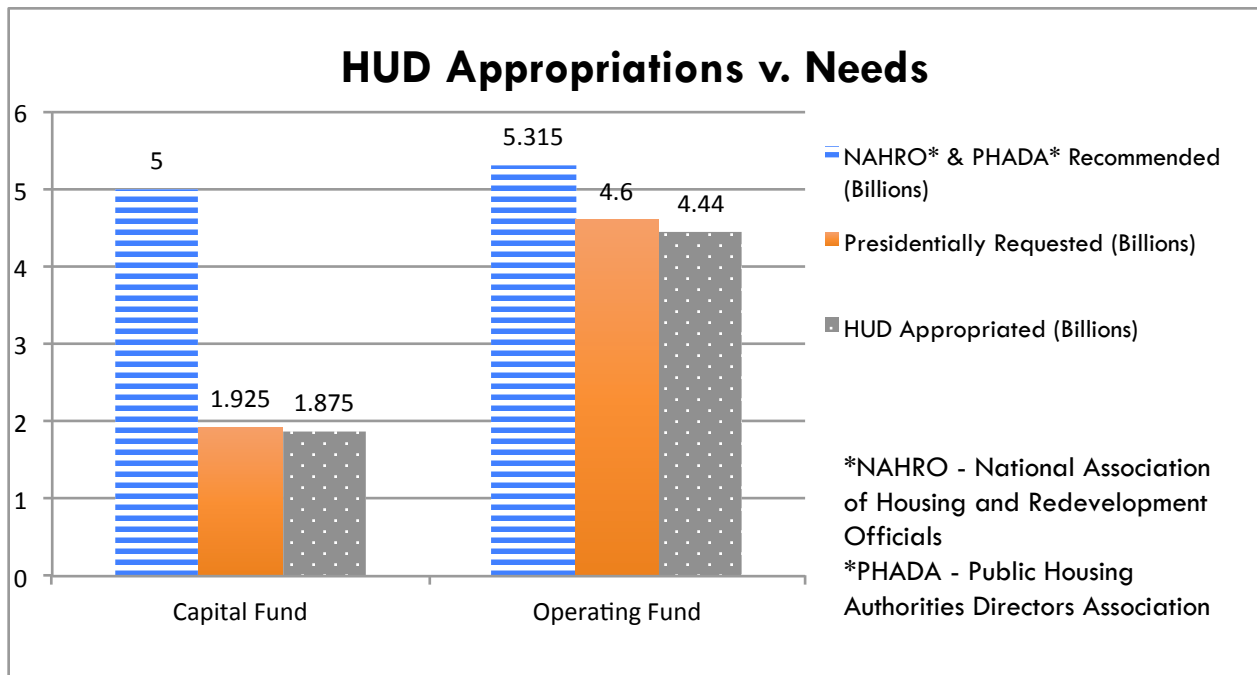


The HUD operating subsidy addresses the gap between what rent revenue covers and expenses, but Congress determines the amount of the allocation. Maintenance costs have “ballooned over the decades,



from \$28 million in 1970 to \$1.3 billion in 1984”.<sup>4</sup> Public housing currently requires four to five billion dollars per year in operating subsidies.

Upgrades and large repairs are covered by the capital fund. Congress also allocates that amount annually, with an average allotment of about \$2 to \$2.5 billion. There are many capital improvements still needed. With the passage of time, necessary improvements and large repairs exponentially increase. As the chart below shows, housing advocates estimate that congressional allocations do not even meet half the capital needs of public housing.<sup>5</sup>



As the funding streams have declined, public housing complexes have not been able to keep up with maintenance costs and have grown into a gross state of disrepair. As of 2011, the public housing system presently faced an unmet capital needs backlog of \$25.6 billion dollars.<sup>6</sup> Without a viable solution to remedy the present capital needs backlog, the abhorrent condition of most of the developments in the public housing system will only worsen. In addition, when public housing units become uninhabitable, those units are put into permanent vacancy, which means there is less housing for a growing population who needs it. This means that low income residents in Philadelphia and beyond face a serious threat to the availability of affordable housing.

In Philadelphia, the financial status of affordable housing follows the national trend.<sup>7</sup> The Philadelphia Housing Authority has a \$371 million annual budget that comes largely from HUD, and about \$24 million in rent revenue. There are approximately 15,000 federally assisted affordable housing units owned by PHA, and it administers another approximately 19,000 housing vouchers. The waitlists for public housing

and housing vouchers in Philadelphia are currently closed due to overwhelming demand. Housing advocates estimate that it will take as long as thirteen years for pending applications to be addressed. Philadelphia is not immune to the public housing financial crisis.<sup>8</sup>

### **Section 8 and RAD<sup>9</sup>**

The mechanisms HUD has used to provide affordable housing began with housing units that were fully owned and operated by the government. As HUD attempted to maximize its ability to serve the housing needs of low income individuals, it began to use what is now the focus of its portfolio: the Section 8 Housing Choice Voucher Program. Section 8 vouchers allow families to choose a housing unit, and the public housing agency pays a housing subsidy directly to the owner or landlord. Section 8 housing “allows for more funding flexibility, including the use of other funding sources like tax credits in addition to public funds, to maintain and improve existing public housing buildings.”

Section 8 is critical to RAD because RAD conversions take traditional public housing properties and convert them to Section 8 properties. It does this because this change in structure allows the influx of private financing while maintaining some measure of government control. Specifically, Section 8 allows for preservation of affordable units as opposed to vouchering out tenants and/or demolition. Additionally, Section 8 is an established program with an existing industry of lenders, owners, and stakeholders, and there is over \$30 billion in private capital already deployed in the programs that make up Section 8. Along with allowing for access to capital, a transition to Section 8 gives operational flexibility to public housing agencies to serve their communities.

In RAD, these benefits of Section 8 are combined with the strong affordability and tenant protections from traditional public housing. The RAD statute requires that existing rights from the previous housing program be preserved in a converted property. In addition, the ongoing public ownership (even if partial) of converted properties preserves long term availability of affordable housing. Despite these protections, RAD allows discretion to local public housing agencies. This discretion poses a potential risk to tenant rights because, without strong and consistent requirements from the public housing agency, private developers may provide insufficient protections in a particular property or uneven protections across the RAD portfolio. In addition, without requirements from the public housing agency, tenant rights may suffer over the long term in the face of changing ownership. Thus, tenant rights and affordable housing can only be protected in Philadelphia if advocates, landlords, and the Philadelphia Housing Authority are clear about these protections in governing documents and leases.

## CHAPTER 2: RENTAL ASSISTANCE DEMONSTRATION (RAD)

In Philadelphia, the first RAD conversion at the Sharswood Blumberg housing complex is underway. Along with HUD approval for the RAD conversion, the Philadelphia Housing Authority received a Choice Neighborhood Initiative Planning Grant to develop a comprehensive transformation plan for the neighborhood. As a result, PHA is in the process of converting 51 long term vacant units in the family tower at Blumberg. The PHA is using RAD in this neighborhood transformation, and has also recognized RAD as a financial solution for the entire city. PHA plans to convert an additional 3,443 units using RAD.<sup>10</sup>

### The History and Structure of RAD

RAD is designed to generate new sources of funding for local housing agencies to address capital needs. It allows public housing agencies to use government owned properties, by mortgaging them or using them as collateral, to access private equity to fund capital needs. In addition, RAD specifically changes the funding formula for the operating fund from annual appropriations to a long term federal subsidy contract.<sup>11</sup>

RAD became law in 2011, and was amended in 2014. The statute, RAD Notice issued and revised by HUD, and RAD Relocation Notice govern the implementation of RAD conversions.<sup>12</sup> This is true even in localities like Philadelphia that are also part of the Moving to Work (MTW) program.<sup>13</sup> In cities like Philadelphia, the MTW Plan requires a significant amendment for each RAD conversion.

The statute and Notice cover a variety of topics, including tenant rights in projects that undergo RAD conversions. These topics include:

- Continued occupancy with no rescreening upon conversion
- No permanent displacement
- Right to return, if temporarily relocated
- No loss of public housing units, with a *de minimis* exception
- Limitations on rent increases
- Lease and grievance procedures
- Resident participation and consultation
- Rights to organize, including recognition and funding
- Choice Mobility
- Jobs and self-sufficiency
- Long term affordability and public ownership

The only binding part of this guidance is the RAD Statute. Unfortunately, the statute only includes vague language that tenants should have “at a minimum...the same rights...as those provided under Section 6 and 9 of the act.” The RAD Notice and Relocation Notice provide additional guidance and tenant protections, but the gap in details between the statute and agency notices can be problematic for public housing agencies. This gap creates two opportunities for advocates. The first opportunity is for advocates

to educate tenants as to their rights under the RAD Notice. The second opportunity is for advocates to ensure the public housing agency provides the rights that are either absent from the RAD notice, or are provided but not detailed. This is already becoming reality in Philadelphia. For example, in Sharswood Blumberg, the first RAD conversion in Philadelphia, tenants and their advocates had to negotiate with PHA to protect rights including relocation terms and clear language in the right to return notice.

On the subset of protections for tenants who are relocated, there are additional complications. The RAD Relocation Notice from HUD guides the relocation of tenants during restoration of RAD converted properties. To the extent that this conflicts with the RAD Notice, the Relocation Notice governs. The rights in the RAD Relocation Notice are broader than under the Uniform Relocation Act (URA), a statute that generally governs relocations under public housing.<sup>14</sup> Under the RAD Relocation Notice, public housing agencies are required to provide temporary relocation assistance to tenants who are moving out of their property for a conversion. If the relocation is more than a year, the public housing agency must make permanent relocation assistance and payments available to tenants, pursuant to the URA. Thus, the Philadelphia Housing Authority must implement relocation in a way that complies with the URA, as applicable, and also is consistent with the guidance of the RAD Relocation Notice.

**PROPERTIES ELIGIBLE FOR RAD CONVERSIONS**

Project Based Vouchers (PBV)

Section 8 funding resource that allows a public housing agency to take a portion of their voucher budget authority and use it to sponsor or promote the development of low income housing units within privately owned developments.

Project Based Rental Assistance (PBRA)

Section 8 funding resource that allows for developers to construct low income housing where HUD pays the developer a subsidy in addition to a resident's rental payment.

Moderate Rehabilitation Program

A project based rental assistance program that was repealed in 1991.

Rental Supplement Program

A program similar to PBRA in which HUD pays a rent subsidy to private owners.

Rental Assistance Payment Program

A program similar to PBRA in which HUD pays a rent subsidy to private owners.

**The Details of RAD Implementation<sup>15</sup>**

RAD has two components, Component I and Component II. RAD conversions currently underway in Philadelphia are Component I conversions and Philadelphia has been authorized to convert 3,189 public housing units under this component.<sup>16</sup> Following reconstruction or rehabilitation under either component,

residents who live in the converted properties will continue to pay rent that does not exceed thirty percent of their adjusted gross income.

RAD's Component I allows projects funded under the public housing program to convert their assistance to long term, project-based Section 8 rental assistance contracts. Under this component of RAD, public housing agencies may choose between two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). The specifics of these programs are described below.

Component II of RAD allows owners of projects funded under the Rent Supplement, Rental Assistance Payment, and Moderate Rehabilitation programs to convert tenant protection vouchers (TPVs)<sup>17</sup> to PBV or PBRA. They can convert following either the expiration or termination of their relevant contracts provided they occurred after October 1, 2006. While there is no cap on the number of units that convert to RAD under Component II, conversions under this Component are limited to the amount of TPVs in existence under these repealed HUD "legacy" programs.

Both Component I and Component II of RAD involve Project Based Voucher (PBV) programs and Project Based Rental Assistance (PBRA) programs. Both the PBV program and the PBRA program are funding resources available under the Section 8 Housing Program.

The PBV program allows a public housing agency to take a portion of their voucher budget authority and use it to sponsor or promote the development of low income housing units within privately owned developments. In PBV RAD conversions, up to 50% of the units in a project may be assisted, though there are exceptions for special program properties. PBVs are administered by the public housing agency, which enters into a HAP contract of 15 years with the project owner.

The PBRA program allows for developers to construct low income housing and receive payments from HUD for the difference between the HUD approved market based rent and the rental contribution paid by residents. Unlike the PBV program, there is no cap on the percentage of PBRA units in a project. Project owners enter into an initial commitment contract with HUD for the conversion, and then enter into a 20-year HAP contract with the local public housing agency.

While there is variation between the two components of RAD and the types of contracts it offers developers and owners, there are some program-wide policies that concern advocates. Because of the discretion allowed to public housing agencies and developers, RAD as a whole creates the risk of a loss of tenant rights and long term affordable housing. In the following sections of this guide, we refer to the differences among the programs as they are applicable to tenant rights and affordability concerns. The next section begins with the historical background of tenant rights in public housing and then explores particular areas of concern for tenants during a RAD conversion.

## **CHAPTER 3: WHAT RAD MEANS FOR TENANTS**

A focus of this advocacy guide is the protection of tenant rights during the upcoming RAD conversions. To that end, this section highlights the rights tenants had under traditional public housing, how those rights were secured, and what rights are now at risk.

### **Traditional Rights for Tenants<sup>18</sup>**

Families living in public housing are protected by the statutes that created and implemented HUD. These statutes provide low income families with both affordable housing and protections necessary to ensure the continued sustainability of public housing.<sup>19</sup> Since its founding, HUD has worked to create and implement a variety of both regulatory and procedural rights for the benefit and security of families living in public housing. Some of these specific rights are discussed below. In addition, the Fair Housing Act of 1968 protects public housing residents from discrimination on the basis of race, color, sex, religion, national origin, disability, or national origin in housing or housing-related transactions. The Act encompasses the denial of any qualified applicant from participation in the public housing program. It also prohibits differential housing, segregation, and the creation of discriminatory eligibility standards.

#### **RIGHT TO EMERGENCY TRANSFERS**

If conditions in a resident unit or building pose an immediate threat to the life, health, or safety of the resident or their family members, residents have a right to an emergency transfer to protect their safety. Public housing agencies must also allow for emergency transfers to alleviate a life-threatening medical condition, to alleviate a threat based on an assessment by law enforcement, to protect members of the household from criminal attack at the property or in the neighborhood, or to protect a domestic violence victim.

#### **RIGHT TO ORGANIZE**

Owners of public housing developments (and their agents) are required to recognize legitimate resident organizations. A tenant organization is legitimate if it has been established by the tenants of a multifamily housing project for purposes of addressing issues related to their living environment, to include the terms and conditions of their tenancy, as well as activities related to housing and community development.<sup>20</sup> Such tenant organizations must be independent of non-resident owners and management agents. As representatives of the interests of residents, these organizations must be allowed to meet regularly and operate democratically.<sup>21</sup>

#### **NOTIFICATION OF RENT INCREASES**

HUD requires that property owners give residents notification of rent increases at least 30 days before submitting a request with HUD for an increase in maximum permissible rent.<sup>22</sup>

#### **GRIEVANCE PROCEDURES**

Residents living in public housing developments have a right to a grievance procedure.<sup>23</sup> This right includes any dispute that a tenant may have with respect to public housing agency action or failure to act in accordance with the lease or regulations that adversely affects the individual tenant rights, duties, welfare or status.

## RIGHT TO RELOCATION

HUD provides public housing residents with both temporary and permanent relocation assistance under the Uniform Relocation Act (URA). Tenants in need of relocation have the right to receive reimbursement for all reasonable out-of-pocket expenses incurred while relocating, including moving cost and any increase in rent or utility cost resulting from the relocation.<sup>24</sup>

### **Short Term Risks for Tenants in a RAD Conversion<sup>25</sup>**

The risks to tenant rights in a RAD conversion occur at distinct stages of the conversion process. This section discusses these risks in four stages of a conversion: (1) before HUD approval, (2) after a commitment contract (CHAP) has been issued, (3) while tenants are relocated, and (4) once tenants are living in the RAD converted property.

#### STAGE 1: AREAS FOR TENANT ADVOCACY PRIOR TO CLOSING OR HUD APPROVAL

Risk: Vacant units may be an excuse to decrease the affordable housing supply. Though RAD conversions may not reduce the amount of housing except by a *de minimis* amount (no more than the greater of 5% of units immediately prior to conversion or 5 units), if a unit has been vacant for 24 months prior to RAD application, it is excluded from the *de minimis* threshold. In jurisdictions with large capital improvement backlogs, this vacancy exception may significantly reduce the overall affordable housing supply.

*In Philadelphia* the PHA has preserved this vacancy exception in its *de minimis* threshold. PHA has also added an exception that allows for reducing the total number of affordable housing units if it involves reconfiguring apartments (e.g. converting efficiency units to one-bedroom units) or facilitating social service delivery (e.g. converting a basement unit into community space). These exceptions create a significant risk that Philadelphians will have even fewer affordable housing units than historical or current levels. Given the extraordinary public housing waiting list in Philadelphia, this is a serious concern.<sup>26</sup>

Risk: There may be disagreement about the amount of reconstruction or renovation needed. Tenants and public housing agencies or developers may not see eye-to-eye on how much renovation is needed. If tenants think that the unit is in serious disrepair, but the housing authority or developer only proposes moderate or light reconstruction, early conversations may be needed.

*In Philadelphia* it is not clear whether PHA and developers are seeking early or consistent tenant input into the type of renovations needed in general, or in particular properties. This is an opportunity for advocates and tenant organizations to be involved in the early stages of renovation with developers.

#### STAGE 2: AREAS FOR TENANT ADVOCACY AFTER CHAP HAS BEEN ISSUED

Risk: Public housing agencies and developers may not establish an adequate relocation plan.<sup>27</sup> Though a written relocation plan is not required by the RAD statute or Notice, HUD “strongly encourages [public housing agencies] to prepare a written relocation plan...” Advocates have worked to ensure local public housing agencies have a written relocation plan so that there are clear standards for tenant rights. Though HUD does not require a relocation plan, a public housing agency cannot relocate tenants until

they have written HUD approval, which may be an opportunity for HUD to de facto require a relocation plan.

*In Philadelphia* the PHA has created a relocation plan for Sharswood Blumberg, but this plan will not be applicable for other conversions, as PHA has stated that each project will have its own RAD relocation plan with criteria for relocation and return of residents. PHA has not issued any other relocation plans, so it is not clear whether each conversion will require relocation of residents or the criteria for that process. This uncertainty creates the risk that tenant relocation rights will not be adequately enforced or explained to tenants. Advocates should work with PHA and private and non-profit developers to identify the relocation protections that should exist for all tenants. At a minimum these protections should include those outlined in the RAD Relocation Notice.

Risk: Missing the opportunity to select responsible developers. After a CHAP commitment contract has been issued, the public housing agency begins the process of securing contracts with developers and financing. The choice of developer and the structure of the deal are opportunities to select partners who are committed to long term affordability and accessibility.

*In Philadelphia* PHA uses a Request for Proposal (RFP) process, though they have not been forthcoming about the criteria or process for choosing developers or structuring deals. This stage is an opportunity for advocates to insist that PHA is transparent, values long term affordability, and includes such developer criteria in its process. Specifically, Philadelphia's RFP should ask developers to demonstrate that they value tenant protections and long term affordability.

Risk: Not adequately consulting tenants before a HAP contract is signed. A public housing agency is required to have a meeting with tenants before a HAP contract can be signed. This is an opportunity to inform tenants about temporary relocation and rights during that process. This is also an opportunity to set up regular meetings with tenants to inform them of their rights.

*In Philadelphia* the PHA holds monthly board meetings, and presumably will hold their statutorily required meetings with tenants. If the structure and attendance of tenant meetings is inadequate, tenants have little recourse through monthly board meetings. The structure of these meetings does not encourage participation by tenants, and the time is difficult for working tenants. Meetings that are not held during the workday, or that are formatted differently may be more welcoming to tenant participation.

### STAGE 3: AREAS FOR TENANT ADVOCACY WHEN TENANTS ARE BEING RELOCATED

Risk: Ensuring that tenants are not rescreened upon RAD conversion. Under the RAD Statute and RAD Notice, current tenants are not subject to rescreening, income eligibility, or income targeting. This means that current tenants are grandfathered in to pre-conversion conditions. Some public housing agencies have been trying to rescreen during the conversion, for example, if eligibility has changed while the tenant is temporarily relocated. The language in the RAD Statute is stronger than the RAD Notice, and seems to imply that any rescreening (at closing, at conversion, or at move-in) is prohibited.

This rule may implicate Low Income Housing Tax Credit (LIHTC) eligibility.<sup>28</sup> In order for a property to continue to be eligible for LIHTC, the tenants must have met certain income requirements when the property converts (or at the date of the application). If tenants in units applying for LIHTC are above the

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income limit, then the unit will not qualify as low income for LIHTC purposes. Therefore, if there are only LIHTC units available, a tenant who is grandfathered in to income restrictions pre-RAD will not qualify for that unit and will be unable to move in.

*In Philadelphia* it is not clear whether PHA has a comprehensive approach for these rescreening issues. In Sharswood Blumberg, the first RAD conversion in Philadelphia, the relocation documents did not clearly outline tenant relocations rights or rescreening plans. CLS, as advocates for tenants, was able to work with PHA to revise the relocation documents for this conversion and clarify tenant rescreening protections. There is an opportunity for advocates in future RAD conversions to insist that PHA comply with the RAD statute and not rescreen tenants returning to converted properties.

Risk: Ensuring that tenants have the right to remain or right to return to the property after temporary relocation. Tenants cannot be permanently involuntarily relocated as a result of a RAD conversion, including for lack of available units for people with disabilities. Relocations should be completed in compliance with the URA. Tenants are able to forfeit their right to return and receive permanent relocation assistance if temporary relocation is to exceed 12 months, but the decision to do this is the tenant's, should be fully informed, and should not be the result of pressure from the housing authority or developer.

Relocation assistance varies depending on the length and permanence of the relocation. If it is a temporary relocation, the tenant will be reimbursed for reasonable expenses associated with the move. If it is a voluntary permanent relocation, the tenant will be reimbursed for reasonable moving expenses, and will be given assistance to help them find a replacement property and fill out all relevant forms.

*In Philadelphia* it is unclear whether PHA has a comprehensive plan as to the return process for tenants. At Sharswood, CLS has worked to ensure compliance with tenants' right to return. There is an opportunity for advocates in future conversions to do the same.

#### STAGE 4: AREAS FOR TENANT ADVOCACY WHEN TENANTS RETURN TO THE CONVERTED PROPERTY

Risk: Ensuring that any tenant rent increases because of RAD conversion are appropriately phased-in. For most tenants, federal rules base the tenant's share of the rent on tenant income, limited to 30% of adjusted household income. Tenants who already pay 30% of their income towards rent prior to RAD conversion will not see a rent increase. RAD imposes a 30% of income cap on tenant rent, which generally matches most public housing and Section 8 properties. However, some tenants may pay rent that is less than 30% of their income before a RAD conversion, and these tenants may experience an increase in rent when they relocate or return. Any increase that is "purely... a result of the RAD conversion" must be phased in over a period of 3 or 5 years as decided by the PHA. A straightforward way to ensure that this incremental approach is implemented is to include the rent increases in lease addenda.

*In Philadelphia* PHA has laid out a plan for incremental rent increases consistent with RAD in its Administrative Plan.<sup>29</sup>

Risk: Ensuring that developers and owners support tenant organizations and tenant participation. Like public housing, residents at RAD properties have the right to establish and operate resident organizations. If there is a “legitimate resident organization” at the property, the RAD Notice requires RAD developers to fund \$25 per unit to be used for education, organizing, and training. If there is no formed organization, RAD developers are encouraged to engage with residents, and make the funds available for organizing.

*In Philadelphia* tenant advocates have worked to ensure that these funds are available for tenant organizations, though it remains to be seen whether developers will comply with this requirement.

Risk: Ensuring that tenants have a fair grievance procedure. The RAD statute ensures the continuation of the grievance procedures under traditional public housing, as described in the preceding section of this guide. PBV RAD conversions generally mirror public housing grievance procedures. The public housing agency is required to outline procedures in its administrative plan and the developer is required to provide an informal hearing for issues about tenancy and termination of assistance. PBRA RAD conversions provide different rights, and must be included in the addendum to the House Rules that are submitted to HUD by a public housing agency as part of their financing plan. Regardless of which type of conversion is happening, grievance procedures should be incorporated into documents early into the conversion process. Ideally these documents, such as lease addendum, are legally enforceable.

*In Philadelphia* PHA’s Administrative Plan provides baseline informal hearing rights and policies required under RAD and PHA has told advocates that “[g]rievance Hearing Procedures will be part of the Lease Briefing Process.”<sup>30</sup> While the RAD Notice does require the presence of a grievance procedure, the exact details to the procedural requirements are unclear. This also creates the risk that there will be no oversight to ensure the developers are implementing legally adequate grievance procedures. Tenant advocates should work with PHA to clarify grievance procedures in converted properties, with a particular eye to what current grievance procedures in public housing are working for tenants.

Risk: Ensuring fair waiting list policies for new RAD tenants. The RAD Notice gives public housing agencies options for establishing and maintaining waiting lists, which include moving from or to site-based, program-wide or voucher-wide waiting lists. Local agencies can establish their own rules about transfers between RAD properties and timelines, though they are required to educate tenants if they are changing their current wait list policies. In addition, there are no clear grievance or informal hearing requirements for applicants to RAD properties.

*In Philadelphia* there is not sufficient guidance from PHA about what their citywide wait list policy or application grievance procedures will be. However, PHA has stated that when there is a site based waiting list at a property, that waiting list will be transferred over to RAD.<sup>31</sup> This creates an opportunity for tenant advocates in general and in particular conversions to make sure such policies are both clear in their terminology, and fair in their application.

## Long Term Risks for Tenants in a RAD Conversion

In addition to the risks posed by the RAD conversion process, there are two related long term issues that pose risks for tenants after the conversion is complete. The first issue is tenant protections if a private owner is foreclosed on. The second issue is the long term preservation of affordable housing units.

### FORECLOSURE AND THE HAP CONTRACT<sup>32</sup>

HUD regulations provide a process in the event of foreclosure under a mortgage secured by a RAD-converted property. This process mandates that ownership be transferred to an interim owner, who could be the lender or could be another pre-approved entity. This interim owner is called a Lender Temporary Custodian (LTC) and owns the property for as long as it takes to find a new permanent owner. The important part of this process is that the LTC can operate as the owner under the HAP contract, which means that federal subsidies continue.

As part of this process, the LTC is responsible for finding the permanent replacement owner (PRO). HUD must consent to the PRO. If consent is obtained, the PRO assumes the HAP contract, RAD Use Agreement and other RAD requirements. The RAD Use Agreement is a contract that runs concurrent to the HAP contract and requires that the unit remain affordable housing and continue to maintain the same amount of units. However, HUD is not required to continue HAP assistance to the PRO. HUD can decide not to continue HAP subsidies to the PRO, for reasons such as breach of contract and/or insufficient funding.

If HUD decides not to continue these subsidies, then tenants are left with limited remedies. In the existing scheme, tenants cannot enforce the HAP contract and are protected only by the default affordability protections of the RAD Use Agreement. These protections are essentially standard tenant rent protections, federal accessibility requirements, fair housing and civil rights requirements, and enforcement capabilities of these rights. HUD is expected to issue guidance on how RAD interacts with the Fair Housing Act sometime in 2016.

### MAINTAINING AFFORDABILITY OF CONVERTED PROPERTIES

In addition to the risk of foreclosure, there are other scenarios where tenants may lose access to affordable housing.

A straightforward scenario is if Congress does not appropriate sufficient funds. In this case, the regulations relieve HUD of the obligation to renew funding to private owners, even under the long term HAP contract. In this scenario, tenants may suffer because the subsidy can be terminated or transferred to another building.

Another potential risk is that the HAP contract can be terminated for owner breach or involuntary transfer of the property. In this scenario, HUD is not required to continue providing rental assistance, though it can elect to do so. There are also some protections if HUD decides to terminate HAP contracts, including legal requirements that HUD to maintain project-based Section 8 contracts at or during a foreclosure process, and that HUD provide tenant protections prior to contract termination.<sup>33</sup>

If the HAP contract is terminated and HUD does not provide assistance, like with foreclosure, the only protections are the Use Agreement's default affordability requirements. Practically speaking, the developer simply has to petition HUD that it has made genuine efforts to find low income tenants and cannot. HUD, based on this information, can make a discretionary decision to end the Use Agreement, allow for different tenants to enter, and the unit is no longer part of the affordable housing stock.

## **CHAPTER 4: DECISION MAKERS IN PHILADELPHIA**

Any discussion of strategies to ensure RAD conversions protect tenant rights and long term affordable housing must take into account the political and regulatory structure in Philadelphia. This section gives a brief overview of the relevant decision makers in Philadelphia who are or may be involved in RAD.

### **Philadelphia Housing Authority<sup>34</sup>**

The Philadelphia Housing Authority (PHA) is the fourth largest public housing agency in the country and the biggest landlord in Philadelphia. PHA is one of 39 housing agencies nation-wide that is part of HUD's Moving to Work (MTW) program. The PHA is converting approximately 3,800 of its 14,000 public housing units to RAD in several phases.<sup>35</sup>

The PHA has nine members of the Board of Commissioners, two of whom are Resident Commissioners, and must be residents of housing owned or controlled by the PHA. Board members are appointed by the Mayor, and approved by a majority of the City Council. The two Resident Commissioners are chosen based on a procedure established by the mayor, City Council President, and executive director of the PHA. In Philadelphia, Resident Commissioners are elected by an open election. The PHA also has a President and CEO who reports to the board and is fully responsible for leadership and management of PHA. The current President and CEO of PHA is Kelvin Jeremiah. He was appointed in 2013 after being interim director.

### **PHA and RAD Developers**

Philadelphia Housing Authority is in phase one of its RAD plan. Phase one consists of Component I (entirely PBV) conversions. Most of the conversions will be internal PHA projects, but there are five Alternative Management Entities ("AMEs") that work with the PHA. These sites are: 8 Diamonds, Falls Ridge, Martin Luther King Plaza I & III, Spring Garden scattered sites I & II, and Courtyard.

This AME approach gives PHA less control of the development and management process because the AMEs control most of the ground leases, the relocation plans, and general procedures for the conversion. This presents an opportunity for advocates to partner with AMEs to create a mutually beneficial relationship that protects tenants and developers. Advocates can serve as resources for AMEs as they plan the conversion process, help anticipate tenant needs in advance, and help ensure tenant protections. Unfortunately, PHA has not yet confirmed a complete list of potential private developers that will be involved in the RAD conversions. However, advocates can begin now to develop resources to assist PHA and private developers with tenant protections in RAD conversions.

In addition, PHA has a "transfer of assistance" strategy so that private developers and nonprofits can take over and preserve affordable housing units. PHA has confirmed that Project HOME and similarly mission-driven private developers are the intended recipients of the transfer of assistance strategy. There are fewer than 900, mostly scattered site "permanently vacant", units that the PHA hopes to move to these private developers. This approach has advantages for Philadelphia: vacant units are returned to

the pool of affordable housing, mission-driven organizations are able to integrate housing into their service model, and PHA accesses new sources of capital.

### **Affordable Housing As A Philadelphia Issue<sup>36</sup>**

There has been little public political involvement in the upcoming RAD conversions in Philadelphia. While the first RAD conversion at the Sharswood Blumberg development, and the larger neighborhood renovation around it, has received attention and subsequent approval by current Council President Darrell L. Clarke, Councilwoman Jannie Blackwell, and now former Mayor Michael Nutter, the degree to which Philadelphia's political leaders will be involved in the remaining conversions is uncertain. At present, the PHA has power over these RAD conversions and is still in the early stages of shaping its understanding of the RAD program. Other than a mention in the Office of Housing and Community Development's (OHCD) planning materials, Philadelphia's new Mayor Jim Kenney has not stated any public views on the RAD program and the changes it represents for the housing community. However, Mayor Kenney has announced intentions to increase the number of quality affordable housing properties in the Philadelphia area.

Though there has not been much political activity in Philadelphia's RAD conversions, affordable housing is an increasing focus of political attention. Philadelphia's political leaders have historically voiced concern about the state of low income housing in the city and the issues facing residents who reside in those developments. The city has many agencies and commissions, outside of the PHA, whose duty it is to address both housing and resident rights issues. These include, but are not limited to: the Office of Housing and Community Development, Philadelphia Housing Development Corporation, and the Philadelphia Fair Housing Commission. Each of these entities, albeit in various capacities, has a mission that includes protecting the interest of low- to moderate- income residents through the development and maintenance of long term affordable housing properties. A specific example is the Choice Neighborhood program. Like RAD, the Choice Neighborhood program is a HUD backed program. However, whereas RAD leverages public and private debt and equity to foster the creation of quality affordable housing in Philadelphia, the Choice Neighborhoods program involves a direct grant of \$30 million dollars to the city for use in revitalizing its north central area.

Although there has yet to be any major political involvement, at least publicly, in the ongoing RAD conversions, there are political advocacy opportunities. Given the concern political leaders have historically exhibited about the affordable housing issues the RAD program seeks to address, future political involvement in RAD may serve as a source of support for advocates who want to make sure Philadelphia's implementation of the program is fair to residents.

## CHAPTER 5: CASE STUDIES AND STRATEGIES

Though RAD is a new program nationally, several other cities are ahead of Philadelphia in implementation. This section summarizes the strategies used in other cities to protect tenant rights and preserve long term affordability of public housing properties during RAD conversions. The following section will synthesize these case studies and make suggestions for future advocacy in Philadelphia.

### Case Study: San Francisco, California<sup>37</sup>

San Francisco has taken an aggressive approach to ensuring that tenant rights and long term affordability are protected in RAD conversions. This approach stems from the combination of a strong city history of tenant advocacy and a history of political challenges for the San Francisco Housing Authority. In 2013, in the face of major budget deficit and managerial concerns, HUD audited the SFHA and labeled it a “troubled” agency. Typically, such designation severely limits the agency’s ability to receive any federal support, which meant that the chances of the SFHA being approved by HUD for the RAD program were going to be very low.

In the face of these challenges, advocates and city government, led by Mayor Lee, began a “re-envisioning process” to address the issues outlined in the HUD audit report. The following year, HUD approved the city’s application for RAD. Because of the Mayor’s Office of Housing and Community Developments (MOHCD) unusual level of involvement in the RAD approval process, MOHCD was able to facilitate SFHA’s implementation of advocates’ requests that the process include mechanisms that protected the rights of residents during RAD conversions in the city. The tools used in San Francisco included tenant-focused developer selection, ground leases, tenant lease addenda, other housing retention and tenant protective language in loan documents between MOHCD and SF RAD developers, and city legislation.

San Francisco took advantage of one of the earliest opportunities in the RAD conversion process to protect tenant rights and long term affordability: developer selection. RAD program guidelines provide cities with substantial discretion over developer selection, so the developer solicitation and selection

#### **RAD STRATEGIES: FORMAL DOCUMENTS**

**Memorandum of Understanding (MOU):** An agreement that clearly explains expectations and responsibilities for residents, developers, and the PHA. May not be legally enforceable, but is a tool to stimulate discussion and hold parties publicly accountable.

**Long term ground leases:** A lease from a public housing agency to a developer for the land under RAD-converted buildings that allows the agency to control the land separate from the physical structures. This allows the public housing agency to preserve long term affordability when they do not retain ownership in the converted units.

**Lease addenda:** A supplement to a lease that secures tenant rights, explains rights and responsibilities and is legally enforceable.

**House Rules:** Rules established by the developer, owner, or property manager that clearly explain expectations for the housing unit(s). These can clarify expectations and responsibilities for both tenants and landlords.

process in San Francisco emphasized the strength and experience of the development team, the team's vision for long term ownership and operation of the housing, and the team's experience with involving residents in the planning and implementation of rehabilitation and operations through their Request for Qualifications (RFQ) process. Key provisions of San Francisco's RFQ process favored tenants by requiring interested developers express their commitment to engage with interested parties to implement fair and practical resident protection policies. San Francisco ultimately selected seven non-profit developers and two for-profit developers with significant experience in managing low income housing projects and providing on-site services to tenants. In turn, these developers have been partners in implementing RAD conversions that respect tenant rights, including using lease addenda.

**RAD STRATEGIES: COURTS AND LEGISLATION**

**Local or State Legislation:** City or state legislation can supplement regulatory requirements for RAD by increasing oversight of public housing authorities or mandating tenant protections.

**Consent Decrees:** In some cities, previous litigation has resulted in consent decrees regarding public housing. Consent decrees can provide opportunity and leverage to advocate for tenant rights and long term affordability in RAD conversions.

**Freedom of Information Act (FOIA) Requests:** In many cities, a major challenge for advocates is the limited information available from the public housing authority about RAD conversions. Freedom Of Information Act (in Philadelphia, Right to Know) requests are opportunities to request information about RAD conversions to shape

San Francisco also uses ground leases to help ensure the long term affordability of RAD converted properties. Despite private developer ownership of converted housing developments, long term ground leases ensure that ownership of the land (ground) the housing developments are on remains vested in the city of San Francisco. These leases run for a period of 99 years, after which ownership rights to the development, and any improvements made to it, would revert in the city. This provided both the SFHA and the city of San Francisco continued oversight rights of the RAD converted properties, including the review and approval of rent increases and occupancy restrictions, construction plans, and assessment of any material building alterations valued above \$100,000. It also gave the SHFA the ability to ensure the RAD developer maintained all properties in compliance with a standard of good condition and repair, allowed them to approve of management agents, granted them periodic review of managerial practices, financial status, and annual operating budget, as well as the ability to create a RAD-specific oversight board.

Finally, San Francisco supplemented the regulatory and executive branch strategies with a piece of legislation, the Right to Return ordinance, that supplements federal protections for residents in the relocation process. This formal strategy is complemented by materials for residents explaining RAD and tenant rights during and after RAD conversion that are used by advocates and government officials throughout the city.

**Case Study: Baltimore, Maryland<sup>38</sup>**

In contrast to the proactive approach taken by San Francisco, Baltimore's approach to RAD began with the Housing Authority of Baltimore City (HABC) beginning the RAD process without appropriately including residents. In response to initial RAD conversion plans, residents and advocates sought



information about the conversions and ultimately protested and pursued legislative action. Though political protest and introduction of legislation brought attention to RAD conversions in Baltimore and begin conversations among the city, developers, residents, and advocates, these strategies did not lead to ultimate action.

As a result, advocates filed suit under a preexisting consent decree concerning housing for individuals with disabilities (as many of the proposed RAD conversion properties housed individuals with disabilities). This suit was settled with a supplemental decree that has allowed advocates and residents to obtain information about conversions, and protect tenant rights through oversight and monitoring. Specifically, advocates have convinced HABC to use ground leases, when they were not originally planned. In addition, the HABC ultimately asked developers to sign a Memorandum of Understanding with resident councils that protected organizing rights and the right to use RAD converted properties.

### **Case Study: Chicago, Illinois<sup>39</sup>**

Chicago is a city with advocacy still in progress regarding RAD. A coalition of community organizations called the Chicago Housing Initiative is supporting a comprehensive legislative approach to homelessness, affordable housing, and accountability by the public housing agency called the Keeping the Promise Ordinance. The advocacy effort and proposed legislation comes in the face of a serious affordable housing crisis in Chicago, including losing more than 16,000 public housing units since 1999, leaving an average of 4,600 units vacant between 2009 and 2013, not using almost half a billion dollars in cash at its disposal, and circulated 13,500 fewer Housing Choice Vouchers than HUD had funded in 2015.

The legislation mandates increased oversight of the Chicago Housing Authority, replacement and rebuilding of public housing, use of HUD funding, and advancement of fair and affordable housing throughout Chicago's neighborhoods. The legislation focuses on RAD in three key ways. First, as part of an overall strategy, it requires the city to replace affordable housing on a one-to-one basis, which means the CHA is held to a higher standard than RAD regulations may impose. Second, it requires any RAD conversions in Chicago use long term ground leases or contracts that ensure CHA's control over resident placement processes. Third, it requires RAD converted properties provide key

#### **RAD STRATEGIES: PUBLIC ENGAGEMENT AND EMPOWERMENT**

**Tenant Outreach:** Public housing residents are ill-informed about RAD conversions and their implications. Educating tenants about their rights is a powerful strategy, especially given that the RAD regulations require tenant meetings before conversion.

**Public Organizing Advocacy:** Some cities have been able to capitalize on the political climate to organize and demonstrate for transparency and tenant-friendliness in RAD conversions, often as part of a larger effort to call attention and resources to affordable housing issues.

**Developers as allies:** There are many opportunities for residents and advocates to find shared interests. For example, tenant advocates and developers have worked together to solve emergency transfer issues. In addition, cities that use affordability and accessibility criteria to select developers are likely to have developers more closely allied with residents and advocates.

tenant protections including grievance processes, relocation rights, and organizing rights.

### **Case Study: Cambridge, Massachusetts<sup>40</sup>**

The city of Cambridge has conducted a RAD planning and conversion process that has engaged residents and tenant advocates from the start. Cambridge is a portfolio-wide conversion, which occurs when a large portion of a city's public housing stock switches to RAD-backed private property. In order to accomplish what was the fifth largest portfolio-wide RAD conversion application in the country, Cam Authority cooperated with residents, the Alliance of Cambridge Tenants, tenant advocates, and the City of Cambridge and ultimately integrated these interested parties with a network of financial and developer entities.

As a result of this integrated process, tenant rights were considered at every turn and agreements with developers and the housing authority reflect that consultation. For example, at Putnam Gardens, one of the developments set to undergo conversion, advocates and tenants convinced Cam Authority to create a "relocation and unit assignment policies and procedures agreement" that includes "an assurance of permanent housing and benefits, information about the various funding sources and the construction phasing schedule, an overview of the information that tenants will receive, information about how relocation apartments will be assigned, whether residents will be able to return to the same unit after construction is completed, how and when relocation will happen and who will pay for it, and a relocation exception to the Cambridge Housing Authority's pet policy."<sup>41</sup>

## **CHAPTER 6: STRATEGIES FOR PHILADELPHIA**

Philadelphia, like all cities, faces a unique combination of political, economic, and social circumstances in which to implement RAD. Though no single case study of another city applies completely, many of the lessons of these cities can be applied to Philadelphia. In general, agreements among advocates for residents, the PHA, and developers appear to be the most promising strategies for securing tenant protections and long term affordability of housing. We discuss several specific strategies below.

### **Memorandum of Understanding**

A Memorandum of Understanding among some combination of the PHA, developers, resident advocates and residents has great potential as a tool for finding shared interest in a fair, transparent, and orderly RAD implementation process in Philadelphia. No city has undertaken a comprehensive MOU but versions of this approach were successful in Baltimore and Cambridge.

An MOU is likely not legally binding, but implies mutual respect, and can be used as an organizing tool and a way to hold decision makers publicly accountable for long term affordability and tenant rights. Depending on the scope of the document, it could also include other Philadelphia decision makers such as City Council or the Mayor. An MOU could address any of the issues discussed in the preceding chapters.

#### **TOPICS FOR A MEMORANDUM OF UNDERSTANDING**

##### **Long Term Affordability**

- Continued PHA activity to protect long term affordability**
- Developer commitments to long term affordability**
- Oversight of PHA to ensure attention to long term affordability**

##### **Tenant Rights**

- Right to return and no rescreening**
- Organizing rights for tenants**
- Rent protections**
- Fair and comprehensive grievance procedures**

### **Long term Ground Leases**

Philadelphia should embrace a strategy that has been successfully implemented in several cities, including San Francisco and Baltimore: long term ground leases between the public housing agency and developers. These leases – typically multi-decade leases from the public housing agency to a developer for the land on which a public housing building sits – are a straightforward way for Philadelphia to properly supervise the maintenance of RAD converted properties and to ensure developer compliance with agreed upon affordable housing standards.

**TOPICS FOR A LONG TERM GROUND LEASE**

- Required rights for tenants in converted properties, including:**
  - Right to return and no rescreening**
  - Organizing rights for tenants**
  - Rent protections**
  - Fair and comprehensive grievance procedures**
  
- Protections for tenants – including relocation opportunities or affordability protections for the property – in the event the developer becomes bankrupt and the development is foreclosed.**
  
- Creation of a RAD review board including diverse stakeholders (PHA, city agencies, city political officials, residents, and resident advocates) to ensure continued oversight of converted properties.**

### **Tenant Lease Addenda**

Another strategy that can be successful in Philadelphia is the creation of an addendum to tenant leases to supplement the standard RAD lease. This strategy is more likely to be an outcome of conversations among the public housing agency, developers, and resident advocates than a starting point, and it can complement strategies such as an MOU or long term ground lease. Cambridge successfully used this type of document to memorialize rights, expectations, and responsibilities between tenants and landlords that grew out of a collaborative process.

**TOPICS FOR A TENANT LEASE ADDENDUM**

- Organizing rights for tenants and meaningful tenant participation**
- Rent protections**
- Fair and comprehensive grievance procedures**
- Relocation rights, including emergency transfer processes**
- Opportunities to engage with owner**

### **Developer Selection Process**

Due to an ongoing lack of information from the Philadelphia Housing Authority about the status of RAD conversions, it is not clear if there are still RAD developers to be selected in Philadelphia. If there are, a powerful strategy would be to implement a developer selection process that takes long term affordability concerns into account. This approach was a powerful way for San Francisco to ensure RAD implementation that was mutually beneficial to residents and developers. It may also be an opportunity to increase political engagement in Philadelphia around affordable housing by involving the Fair Housing

Commission, City Council, or the Mayor, all of whom have publicly stated interests in improving affordable housing.

**TOPICS FOR DEVELOPER SELECTION**

- Experience in managing low income housing**
- Commitment to long term affordable housing**
- Commitment to engagement with interested parties, including residents**
- History of respecting tenant rights and protections**

### **Legislative Action**

There are a multitude of community organizations in Philadelphia involved in affordable housing advocacy. Some of these organizations – including Community Legal Services and Project HOME – are committed to making RAD a program that protects long term affordable housing and tenant rights.

Currently, Philadelphia’s City Council has a standing committee on Housing, Neighborhood Development, and the Homeless (HNDH).<sup>42</sup> The central task of this committee is to oversee all matters relating to the creation and maintenance of housing within the City, including the offering of both public housing and affordable private housing. In addition, it is the duty of the committee to create and implement strategies for the alleviation of homelessness, as well as monitor all services provided to homeless individuals within the City.

City Council and community organizations could work with PHA and developers to develop a legislative solution that focuses on tenant rights and preservation of affordability for RAD converted properties in Philadelphia. Like the efforts in San Francisco, Baltimore, and Chicago, this type of legislative effort would provide a comprehensive solution to RAD implementation concerns. Regardless of whether legislation is passed, however, the legislative process can be a powerful catalyst for discussion among stakeholders.

## ENDNOTES

<sup>1</sup> The information in this section is largely derived from Anne Marie Smetak, *Private Funding, Public Housing: The Devil in the Details*, 21 VA. J. OF SOC. POL'Y & THE LAW 1 (2014).

<sup>2</sup> Housing and Urban Development Act of 1969 (Brooke Amendment), Pub. L. No. 91-152, § 213, 83 Stat. 379, 389 (1969) (codified as amended at 12 U.S.C. § 1715z-1a (West, Westlaw through P.L. 113-31 approved Aug. 9, 2013)).

<sup>3</sup> Housing and Community Development Amendments Act of 1981, Pub. L. No. 97-35, 95 Stat. 384 (codified as amended at 42 U.S.C. § 8107 (West, Westlaw through P.L. 113-13 approved June 3, 2013)).

<sup>4</sup> *Private Funding, Public Housing*, *supra* note 1.

<sup>5</sup> Information in charts comes from NAHRO/PHADA Recommendations, NAHRO/PHA, <http://www.phada.org/pdf/NAHRO-PHADA2015recommendations.pdf> (last visited Apr. 18, 2016); 2016 Summary Statement and Initiatives of the Public Housing Operating Funds, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, <https://portal.hud.gov/hudportal/documents/huddoc?id=12-FY16CJ-PHOpFund.pdf> (last visited Apr. 18, 2016); 2016 Summary Statement and Initiatives of the Public Housing Capital Funds, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, <http://portal.hud.gov/hudportal/documents/huddoc?id=13-FY16CJ-PHCAFUND.PDF> (last visited Apr. 18, 2016).

<sup>6</sup> *Private Funding, Public Housing*, *supra* note 1.

<sup>7</sup> Information in this paragraph about Philadelphia is largely derived from: *Funding*, PHILADELPHIA HOUSING AUTHORITY <http://www.pha.phila.gov/aboutpha/funding.aspx> (last visited Apr. 14, 2016); *Philadelphia Housing Authority*, AFFORDABLE HOUSING ONLINE <http://affordablehousingonline.com/housing-authority/Pennsylvania/Philadelphia-Housing-Authority/PA002/> (last visited Apr. 14, 2016).

<sup>8</sup> Philadelphia Housing Authority, *Philadelphia Housing Authority Waitlist and Average Waitlist Times*, [http://www.pha.phila.gov/media/94668/pha\\_wl\\_time\\_2013.pdf](http://www.pha.phila.gov/media/94668/pha_wl_time_2013.pdf), (last visited April 21, 2016).

<sup>9</sup> Information in this introduction largely derived from: *Housing Choice Voucher Fact Sheet*, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, [http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8) (last visited Mar. 30, 2016); "What is RAD" NATIONAL HOUSING LAW PROJECT, <http://nhlp.org/RAD> (last visited Mar. 14, 2016); *Public slides: Overview of the Rental Assistance Demonstration (RAD) Program*, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT 5 (June 2014); *RAD Spotlight on Philadelphia*, U.S. DEP'T OF HOUSING AND URBAN AFFAIRS, <http://portal.hud.gov/hudportal/documents/>

[huddoc?id=RAD\\_CS\\_Philadelphia.pdf](#) (last visited Apr. 14, 2016).

<sup>10</sup> Information in this introduction largely derived from: *Housing Choice Voucher Fact Sheet*, *supra*, note 9; "What is RAD", *supra*, note 9; *Public slides: Overview of the Rental Assistance Demonstration (RAD) Program*, *supra*, note 9; *RAD Spotlight on Philadelphia*, *supra*, note 9.

<sup>11</sup> Information in this paragraph derived from Smetak, *supra* note 1.

<sup>12</sup> See CONSOLIDATED AND FURTHER CONTINUING APPROPRIATIONS ACT OF 2012, PUBLIC LAW 112-55, AMENDED BY PUBLIC LAW 113-235, <https://www.congress.gov/113/plaws/publ235/PLAW-113publ235.pdf>; *Rental Assistance Demonstration – Final Implementation, Revision 2*, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT 2015, [http://portal.hud.gov/hudportal/documents/huddoc?id=PIHNotice\\_2012-32\\_062015.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=PIHNotice_2012-32_062015.pdf) (last visited Apr. 14, 2016) [hereinafter RAD Notice]; *RAD Relocation Notice*, U.S. DEP't of Housing and Urban Development, [http://portal.hud.gov/hudportal/documents/huddoc?id=RAD\\_Note2.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_Note2.pdf) (last visited Mar. 30, 2016) [hereinafter RAD Relocation Notice]. These documents are referenced throughout this section.

<sup>13</sup> Moving to Work (MTW) is a demonstration program run by HUD that allows local public housing agencies more flexibility in how they spend their federal housing funding. It allows public housing agencies to be exempt from some HUD and voucher rules in order to make funding work better for their local community. *Moving to Work (MTW)*, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/mtw](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw) (last visited Mar. 30, 2016). Philadelphia is a MTW jurisdiction, meaning that the RAD conversion rules are outlined in the MTW Plan.

<sup>14</sup> See 49 C.F.R. Part 24, implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act, found at 42 U.S.C. 4601 et seq.

<sup>15</sup> Information in this section largely derived from the RAD Advocacy Guide. *An Advocate's Guide to Public Housing Conversions under Component 1 of the Rental Assistance Demonstration*, NATIONAL HOUSING LAW PROJECT, January 2016 <http://nhlp.org/files/RAD%20Advocacy%20Guide%202.0%20FINAL%20with%20Appendix.pdf> [hereinafter NHP Advocacy Guide]. More information about the distinction between PBV and PBRA conversions can be found at: *Rental Assistance Demonstration Guide to Choosing Between Project Based Vouchers (PBVs) and Project Based Rental Assistance (PBRA) for Public Housing Conversion*, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, February 27, 2015, [http://portal.hud.gov/hudportal/documents/huddoc?id=RAD\\_PBV PBRA\\_CompareGuide.pdf%20](http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_PBV PBRA_CompareGuide.pdf%20).

<sup>16</sup> Philadelphia Housing Authority, *Fiscal Year 2016 Moving to Work Annual Plan Rental Assistance Demonstration Significant Amendment #2*, [http://www.pha.phila.gov/media/151374/fy\\_2016\\_mtw\\_annual\\_plan-significant\\_amendment\\_2\\_1-14-2016.pdf](http://www.pha.phila.gov/media/151374/fy_2016_mtw_annual_plan-significant_amendment_2_1-14-2016.pdf) (last visited Apr. 2, 2016).

<sup>17</sup> Tenant Protection Vouchers (TPVs) are vouchers issued to eligible tenants of certain properties when an event at the property would otherwise expose tenants to a loss of rental assistance, resulting in an increase in their housing costs. *Tenant Protection Vouchers*, HUD <https://www.hudexchange.info/course-content/hud-multifamily-affordable-housing-preservation-clinics/Preservation-Clinic-Tenant-Protection-Vouchers.pdf> (last visited Apr. 14, 2016).

<sup>18</sup> Section derived largely from HUD guidance on Tenant Rights. See *Public Housing Occupancy Guidebook*, HUD, [http://www.hud.gov/offices/pih/programs/ph/rhiip/phg\\_guidebooknew.pdf](http://www.hud.gov/offices/pih/programs/ph/rhiip/phg_guidebooknew.pdf) (last visited Apr. 1, 2016); *The Management Agent Handbook*, HUD, <http://portal.hud.gov/hudportal/documents/huddoc?id=43815civrHSGH.pdf> (last visited Apr. 1, 2016).

<sup>19</sup> 42 U.S.C. 1437f; see also 42 U.S.C. 3531

<sup>20</sup> 24 C.F.R. 245.110

<sup>21</sup> 24 C.F.R. 245.105

<sup>22</sup> 24 C.F.R. 245.310

<sup>23</sup> 24 C.F.R. 966.50

<sup>24</sup> Relocation Information derived from HUD website. See *Temporary Relocation*, HUD [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/training/web/relocation/temporary](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/relocation/temporary) (last visited Apr. 14, 2016); *Overview of the Uniform Relocation Act (URA)*, HUD [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/training/web/relocation/overview](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/relocation/overview) (last visited Apr. 14, 2016).

<sup>25</sup> Aside from information particular to Philadelphia, information in this section is largely taken from the *NHLP Advocacy Guide*, *supra* note 15, and the *RAD Notice*, *supra* note 12.

<sup>26</sup> See Philadelphia Housing Authority's *Responses to Public Comment ACOF, Admin Plan, and PH Leases*, February 18, 2016. [hereinafter *PHA Response to CLS/RAB*]

<sup>27</sup> *Relocation Requirements under the Rental Assistance Demonstration (RAD) Program, Public Housing in the First Component* U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT 9-10, [http://portal.hud.gov/hudportal/documents/huddoc?id=RAD\\_Notice2.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_Notice2.pdf) (last visited Apr. 18, 2016).

<sup>28</sup> The Low Income Housing Tax Credit (LIHTC) Program is the primary federal government program used to

encourage the construction of low income rental units. *Tax Incentives for Low Income Economic Development: What is the Low-Income Housing Tax Credit*, TAX POLICY CENTER, <http://www.taxpolicycenter.org/briefing-book/key-elements/economic-development/low-income-housing.cfm> (last visited Mar. 30, 2016). During a conversation with a low income housing developer from Boston, one developer called this program "THE program for low income housing" and said that it is a very powerful tool for raising money to build low income housing units. However, he explained that it is currently a highly evolved system that comes with its own set of requirements.

<sup>29</sup> Section 24.5.1 of [http://www.pha.phila.gov/media/161698/11-13-15\\_pha\\_admin\\_plan\\_draft\\_clean\\_and\\_proposed\\_changes.pdf](http://www.pha.phila.gov/media/161698/11-13-15_pha_admin_plan_draft_clean_and_proposed_changes.pdf).

<sup>30</sup> *PHA Response to CLS/RAB*, *supra* note 26 at 17-18.

<sup>31</sup> Admin Plan §24.7.2, *supra* note 29.

<sup>32</sup> Information in this introduction largely derived from *Rental Assistance Demonstration – Long-Term Affordability Restrictions*, NATIONAL HOUSING LAW PROJECT, [http://nhlp.org/files/NHLP-RAD\\_LTAffordability%20%28final%29.pdf](http://nhlp.org/files/NHLP-RAD_LTAffordability%20%28final%29.pdf) (last visited April. 18, 2016)

<sup>33</sup> Pub.L. No. 113-235, div. L, tit. II, General Provisions, Sec. 216 (Dec. 16, 2014)

<sup>34</sup> Information about the Philadelphia Housing Authority largely derived from <http://www.pha.phila.gov>

<sup>35</sup> See *Year 42 Preliminary Consolidated Plan*, CITY OF PHILADELPHIA OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT, <http://www.phila.gov/ohcd/wp-content/uploads/2016/04/year-42-preliminary-consolidated-plan-for-web.pdf> (April 27, 2014). Note that different numbers of units PHA intends to preserve or create using RAD funds have been reported by different sources.

<sup>36</sup> The information in this section is derived from conversations with Philadelphia advocates as well as: *Work Begins on PHA's Sharswood/Blumberg Transformation in North Philadelphia*, CITY COUNCIL OF PHILADELPHIA, <http://phlcouncil.com/council-news/work-begins-on-phas-sharswoodblumberg-transformation-in-north-philadelphia/> (last visited Apr. 14, 2016); *Priorities*, KENNEY PHL MAYOR, <http://kenneyforphiladelphia.com/priorities/> (last visited April 14, 2016); *Philadelphia Awarded \$30M Choice Neighborhood Grant*, PHILADELPHIA HOUSING AUTHORITY, [http://www.pha.phila.gov/pha-news/pha-news/2014/philadelphia-awarded-\\$30m-choice-neighborhood-implementation-grant-by-hud.aspx](http://www.pha.phila.gov/pha-news/pha-news/2014/philadelphia-awarded-$30m-choice-neighborhood-implementation-grant-by-hud.aspx) (last visited Apr. 18, 2016).

<sup>37</sup> This case study is based on conversations with advocates in San Francisco, as well as *NHLP Advocacy Guide* *supra* note 15; Mayor Lee Announces U.S. Department Of

Housing & Urban Development Approval of San Francisco Public Housing Re-Envisioning, CITY & COUNTY OF SAN FRANCISCO, <http://www.sfmayor.org/index.aspx?recordid=509&page=977> (last visited Apr. 14, 2016); S.F. Housing Agency Scores Low in Audit, SFGATE, <http://www.sfgate.com/bayarea/article/S-F-housing-agency-scores-low-in-audit-4181517.php> (last visited Apr. 14, 2016); Heather Knight, *Where S.F. Housing Authority stands 2 years after hitting bottom*, SAN FRANCISCO CHRONICLE, <http://www.sfchronicle.com/bayarea/article/Where-S-F-Housing-Authority-stands-2-years-after-6106969.php> (last visited Apr. 16, 2016); Tomiquia Moss, *Next Steps for Fixing the San Francisco Housing Authority*, SPUR, <http://www.spur.org/news/2013-09-19/next-steps-fixing-san-francisco-housing-authority>, last accessed April 14, 2016 (last visited Apr. 16, 2016); *Request For Qualifications*, SAN FRANCISCO HOUSING AUTHORITY, (Feb. 10, 2014) <http://sfmohcd.org/sites/default/files/FileCenter/Documents/7662-RFQ%20for%20SFHA%20Portfolio%20Developers%2021-FINAL%20CLEAN.pdf>; *Non-Profit Developers to Manage City's Public Housing Under New Program*, ORGANIZED LABOR, <http://www.sfbuildingtradesouncil.org/news/top-stories/321-non-profit-developers-to-manage-citys-public-housing-under-new-program> (last visited Apr. 15, 2016).

<sup>38</sup> This case study is based on conversations with advocates in Baltimore, as well as NHLP Advocacy Guide, *supra* note 15; RAD Notice, *supra* note 12; *Housing Advocates Seek Details About Plan to Privatize Public Housing*, BALTIMORE BREW, <https://www.baltimorebrew.com/2014/03/07/housing-advocates-seek-details-about-plan-to-privatize-public-housing/> (last visited Apr. 15, 2015); *RHTA Legislative Update*, RIGHT TO HOUSING ALLIANCE, <http://rthabaltimore.org> (last visited Apr. 16, 2015); *HABC Refuses to Answer these Essential Questions about RAD*, RIGHT TO HOUSING ALLIANCE <http://rthabaltimore.org/2014/08/habc-refuses-to-answer-these-questions-about-rad/> (last visited Apr. 15, 2016); Rebecca Burns, *In These Times, A RAD-ical Housing Experiment*, IN THESE TIMES, [http://inthesetimes.com/article/16931/a\\_rad\\_ical\\_housing\\_experiment](http://inthesetimes.com/article/16931/a_rad_ical_housing_experiment) (last visited April 15, 2016); *Justice Department Settles with Housing Authority of Baltimore for Failure to Provide Accessible Housing to Persons with Disabilities*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/opa/pr/justice-department-settles-housing-authority-baltimore-city-failure-provide-accessible> (last visited Apr. 16, 2016).

<sup>39</sup> This case study is based on conversations with advocates in Chicago, as well as NHLP Advocacy Guide *supra* note 15; Curtis Black, *Proposed ordinance aims to hold CHA to its promises*, THE CHICAGO REPORTER (July 30, 2015) <http://chicagoreporter.com/proposed-ordinance-aims-to-hold-cha-to-its-promises/>; CHICAGO HOUSING INITIATIVE <http://www.chicagohousinginitiative.org/keeping-the-promise/>.

<sup>40</sup> This case study is based on conversations with advocates in Cambridge, as well as NHLP Advocacy Guide, *supra* note 15; *Rental Assistance Demonstration*, THE CAMBRIDGE HOUSING AUTHORITY, <http://cambridge-housing.org/about/rad/default.asp> (last visited Apr. 16, 2016); *CHA Announces Conversion of 952 Units of Public Housing under HUD's Rental Assistance Demonstration*, THE CAMBRIDGE HOUSING AUTHORITY, <http://www.cambridge-housing.org/news/displaynews.asp?NewsID=219&TargetD=1> (last visited Apr. 16, 2016).

<sup>41</sup> NHLP Advocacy Guide, *supra* note 15.

<sup>42</sup> City Council of Philadelphia website, available at <http://phlcouncil.com/standing-committees/>.



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