

Tenant / Community Opportunity to Purchase Act

An Opportunity to Purchase Act (OPA) gives tenants, community organizations and/or local governments the first right to purchase a property if it is being sold or foreclosed upon. The law does not reduce the property's sale price but does require notification and a defined time frame for a local group to make a purchase offer. These laws are sometimes focused on ensuring opportunities for community organizations to make a purchase offer (called a Community Opportunity to Purchase Act, or COPA) and/or focused on ensuring opportunities for the tenants themselves to organize and make a purchase offer (a Tenant Opportunity to Purchase Act, or TOPA).

Program Design, Implementation and Evaluation Considerations

Elements of the Program

- Define eligible properties
- Define who is eligible to exercise Right of First Offer/Refusal
- Define how to exercise the Right of First Offer/Refusal
- Establish clear timelines and processes for notification and acquisition
- Define affordability requirements
- Outline enforcement mechanisms

Program Design Considerations

Jurisdictions may want to consider the following:

ELIGIBLE PURCHASER: Deciding if tenants, community organizations or both are eligible to purchase a building.

ELIGIBLE PROPERTIES: Determining the sizes and types of properties that will be subject to an OPA process based on the range of properties that comprise the local rental housing stock and are at risk of being lost. For example, some jurisdictions exempt single family homes or properties with less than 10 or 15 units as the ongoing management of small-scale projects can be inefficient or cost prohibitive.

At-A-Glance

POTENTIAL FUNDING SOURCES

- HOME Investment Partnerships Program
- General Fund

COST

Program design and administration costs are generally low, but cost can increase considerably if the program provides direct funding for acquisitions.

ADMINISTRATIVE BURDEN



Medium

Staff capacity needed for program design and leading public and legislative processes, as well as ongoing monitoring and enforcement.

EXTRA CONSIDERATIONS



Politically sensitive

WHICH P?

Preservation

POTENTIAL PARTNERS

- Legal Aid Groups
- Tenant Advocacy Organizations
- Community-Based Organizations
- Affordable housing developers
- Community land trusts

OPTION FOR TOC POLICY COMPLIANCE?

Yes!



RIGHT OF FIRST OFFER AND/OR RIGHT OF FIRST REFUSAL: Determining if the policy includes a right of first offer (also called a right of first purchase), a right of first refusal or both. Organizations with a right of first offer must be given notice of the sale opportunity before the rest of the market. Organizations with a right of first refusal must be given the opportunity to match any market offer.

SECOND RIGHT OF REFUSAL: Providing tenants who choose to forgo their TOPA rights with the opportunity to assign their rights to a qualified affordable housing provider, community land trust or other nonprofit organization.

CLEAR TIMELINES AND PROCESSES FOR NOTICE AND ACQUISITION: Determining appropriate timelines and process requirements for 1) advance notice of sale (the notice that landlords provide before putting the property on the market), 2) registration of interest (the period during which tenants or preservation buyers state or register their interest in purchasing the property), 3) negotiation, 4) securing financing and 5) closing.

PRESERVING AFFORDABILITY: Ensuring that TOPA/COPA purchasers commit to maintaining permanent affordability and outlining the terms of that affordability.

FUNDING: Providing local funding to support acquisition and rehabilitation of properties to facilitate TOPA/COPA purchases and contribute to maintaining long-term affordability. Buyers need access to pre-development financing, acquisition loans, rehabilitation or construction loans and permanent financing. Without funding for acquisition, notifications about pending property sales are more difficult to act on.

QUALIFIED ORGANIZATIONS: Developing and maintaining a list of vetted, qualified organizations who receive notifications and are authorized to make offers. These organizations—which can include community land trusts, affordable housing developers and similar groups—can also be assigned purchasing

rights by tenants under a TOPA policy. In determining which organizations are qualified, jurisdictions may consider organization capacity and expertise to execute a purchase and successfully manage a property.

CAPACITY BUILDING: Investing in technical assistance and capacity building to help support new organizations interested in participating in COPA programs. This prepares them to qualify for funding and to compete with investors for acquisitions. It can also prepare them to convert unsubsidized units to permanent affordability.

NOTICE OF INTENT TO SELL: Defining a notification process to outline when and how an owner of a TOPA/COPA eligible rental property intends to sell. The notice of intent to sell starts all the timelines for TOPA/COPA. Some jurisdictions require an owner to file a notice with the jurisdiction, with existing tenants and with the established list of qualified organizations identified by the jurisdiction

SETTING TIMELINES: Determining a realistic timeline that balances the time needed for tenants to organize and secure financing with the potential burden that the delayed sale puts on property owners. The allocated time for each step of the process can have significant impacts on efficacy and outcomes. Advance work with tenants to form tenant associations and educate tenants about different ownership models can help position them to act when opportunities arise. Some jurisdictions establish different timelines for projects based on size or costs, allowing longer time periods for potentially more complex transactions. First, tenants and qualified purchasers have a limited amount of time to submit a statement of interest. Next, potential buyers have a limited amount of time to make an offer. For most project types, 90 to 120 days is a typical offer period. If no response is submitted at any step of the process, the OPA process concludes and the seller can pursue sale on the open market.

PROCESS DESIGN: Designing a process that is realistic and does not unnecessarily slow sales transactions. While sellers should theoretically be able to get market price for their property sale, there are concerns about how the OPA process could slow down the sales process and impact the property's value.

INCENTIVES FOR PROPERTY OWNERS:

Providing incentives for property owners to accept an initial offer from tenants or qualified organizations during the OPA process. For example, some jurisdictions offer the property owner a refund of the jurisdiction's portion of the Real Property Transfer Tax.

Program Implementation, Administration and Enforcement

OPA programs are generally implemented via local ordinance. Partnering with tenant associations, realtor organizations and property owner organizations to educate the community is important, both in advance of adoption and afterward. Once implemented, robust education and outreach to inform realtors and sellers of their rights and responsibilities under the ordinance are critical to encourage compliance and strengthen enforcement. In the case of TOPA in particular, jurisdictions can invest in education and awareness so that residents of eligible properties understand their rights, resources and opportunities to negotiate future rental agreements or purchase of their home.

Jurisdictions can identify an enforcement mechanism and remedies if eligible properties fail to comply. The jurisdiction should have clear enforcement authority and the tenants should have an avenue to enforce their rights. The policy can also give tenants a legal recourse outside of the municipality.



TOC Policy Requirements: To comply with TOC policy, the ordinance must establish the legal right of first refusal that gives tenants and/or nonprofits the first right to purchase a covered property. The ordinance must establish timelines for notice of sale, offer period, time to close, and time to counter-offer under TOPA/COPA. The TOPA/COPA ordinance must also define eligible and exempt properties.

Program Evaluation

In evaluating TOPA/COPA programs, jurisdictions can analyze how many properties were acquired through the program and how informed tenants and/or local community organizations are of their rights in regards to property acquisition.

Complementary Policies

FUNDING TO PRESERVE UNSUBSIDIZED

HOUSING: OPA programs are most effective when paired with a local funding source for acquisition and preservation.

PUBLIC/COMMUNITY LAND TRUSTS:

Community land trust models can be an effective model for ownership and management of properties acquired through an OPA process.

Other Resources

EXAMPLES*

[City and County of San Francisco - Community Opportunity to Purchase Act](#)

OTHER RESOURCES

[Public Advocates - Leveraging the Housing Element to Advance Tenant & Community Opportunity to Purchase Policies](#)

[Coalition for Nonprofit Housing and Economic Development and LISC Twin Cities - Opportunity to Purchase Policy Options for the City of Minneapolis](#)

[Local Initiatives Support Corporation - Tenant & Community Opportunity to Purchase Policies](#)

[PolicyLink - Tenant / Community Opportunity to Purchase](#)

[Metropolitan Transportation Commission - Preservation Policy 2: Tenant/Community Opportunity to Purchase Act](#)

**Note that examples have not been vetted for full TOC Compliance.*

This document is intended to provide general information and does not constitute legal advice. Additional facts, facts specific to a particular situation, or future developments may affect the subjects discussed in this document. Seek the advice of your jurisdiction's legal counsel before acting or relying upon this information. For specific questions regarding TOC compliance, please reach out to TOCpolicy@bayareametro.gov.