



Right-to-Purchase Policies



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Elements of a Preservation Strategy

1. Financing
2. Legal Rights - Right to Purchase
3. Tenant/nonprofit Capacity

Context

- Lack of housing security for tenants and affordability shortage, esp. for low-income renters of color.
- Gentrifying “hot market” areas in California have really quick real estate transaction timelines /high bids /cash offers that make it nearly impossible for low-income renters of color and even CLTS/nonprofits to purchase property.
- Speculative investment fuels displacement.
- Tenants get little to no notice of sales transactions and are displaced during this process at times.
- Limitations of rent stabilization without vacancy control


COVID-19 Context

- Rent moratorium is not enough long-term.
- Need tools to stabilize low-income communities of color.
- Need to address possible real estate shakeout and protect against speculative investment, foreclosure, etc.
- Electeds need to hear that Preservation is a priority and prevent a repeat of 2008.
- At the same time, government has less money to dedicate to housing preservation; competing needs.
- Consider extending the policy's applicability to distressed properties.



Policy Goals

Different communities and jurisdictions may have different goals around these policies.

1. Prevent displacement of low-income tenants and communities of color; stabilize and support current residents and existing communities
 2. Preserve current affordable housing and generate more options of permanently affordable housing
 3. Create ownership opportunities for low- to moderate-income tenants
 4. Give tenants choice and voice regarding their housing; create opportunities for tenants to organize and build power
 5. Take property off the speculative market and place it under community control
 6. Give tenants and/or non-profit developers an equal opportunity to compete in the market
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How might the policy reflect local conditions?

- What stakeholders could/should you involve? (tenants rights groups, CLTs, nonprofits?)
- What are the causes of displacement in your city? How quickly is speculation happening?
- What does your housing stock look like?
- How organized are tenants, what existing capacity do they have?
- Is there nonprofit / coop capacity to carry it out or advocate?
- What are the goals of the policy?
- Are there sources of financing you can leverage?
- Is there political will for something like this?

TOPA, DOPA, COPA?

- **TOPA:** In 1980, Washington DC adopted the “Tenant Opportunity to Purchase Act,” giving tenants a first offer of sale. Tenants can also assign their right. Since 2002, preserved 3,500+ units of affordable housing.
- **DOPA:** In 2018, DC implemented the “District Opportunity to Purchase Act.” DOPA is subordinate to TOPA, meaning the Mayor can only exercise this power after the tenants have chosen to forgo their rights under TOPA. The City can also assign their right.
- **COPA:** In 2019 San Francisco passed the “Community Opportunity to Purchase Act.” COPA gives qualified nonprofit developers the right to purchase residential buildings of 3+ units, if they agree to keep the property affordable in perpetuity. Includes a right of first offer and right of first refusal.

Right-to-Purchase Components

- **APPLICABILITY:** Specify which properties the policy applies to and which transfers/property types will be exempt.
- **NOTICE OF INTENT TO SELL:** Owner gives Tenants and Qualified Organizations (“QOs”), or both, notice of intent to sell, etc.
- **TIMELINES:** There are timelines for Tenants and QOs to express interest, make an offer, secure financing, and close. If T/QO do not exercise rights within timelines, Owner may proceed to sell property on the open market.
- **TRIGGERING RIGHTS:** Decide what will trigger the rights. For example, only a sale or also demolitions/discontinuance of use?

Right-to-Purchase Components

- **RIGHT OF FIRST OFFER (ROFO):** Before Owner can make/accept/solicit offer to sell property, must give Tenants/QO time to express interest and submit an offer. Owner may accept, reject, or make a counter-offer. Owner gets incentive to accept offer at this stage.
- **RIGHT OF FIRST REFUSAL (ROFR):** If Owner rejects initial offer and gets into contract with a 3rd party buyer, Owner must provide Tenant or QO (whoever made initial offer) time to invoke ROFR and match the outside offer/contract. If they match, Owner must sell to them. If they do not, Owner may proceed to sell to the 3rd party buyer.
- **ASSIGNMENT:** You can build in ability for Tenants to assign rights to QOs. Importance of vetted parties to avoid exploitation.

Right-to-Purchase Components

INCENTIVES: Partial City Transfer-Tax Exemption. Reduction in local transfer taxes to Owners who accept initial offer from T/QOs. Access to Buyers: Tenants/QOs are built-in buyers. Policy facilitates voluntary sales that may cut transaction costs.

PERMANENT AFFORDABILITY: Properties purchased under TOPA/COPA subject to permanent affordability restrictions. Decide on scope/extent: only for QOs or also tenants (w/ subsidies or also w/out)?

TENANT PROTECTIONS: Tenant protections that existed prior to TOPA transactions (i.e. just cause, applicable rent control) should be extended/maintained after TOPA transactions. Depends on local laws.

Avoiding Legal Loopholes

- No selling of rights
- “Qualified Orgs” must be vetted and meet certain criteria (ex. permanent affordability)
- Definition of “sale” designed to capture equity transfers in underlying property
- Definition of “bona fide offer” to protect against disingenuous 3rd party offers/contracts
- Strong enforcement

TOPA - additional components

- **Tenant Decision-Making:** decide on threshold. Ex. majority of tenant-occupied units, or majority of tenant households if one unit, must approve purchase
- **Tenant Organization:** tenants form entity that can acquire real property; also register with the City
- **Longer Timelines:** tenants need sufficient time to organize, form entity, obtain financing
- **Tenant Protections:** built-in rent caps if acquisition inadvertently lifts rent control (depends on local laws)
- **Supportive Partner:** to help tenants make informed decisions about purchasing v. remaining renters, assignment of rights to QOs, & to guide tenants through TOPA process

TOPA Efforts in California

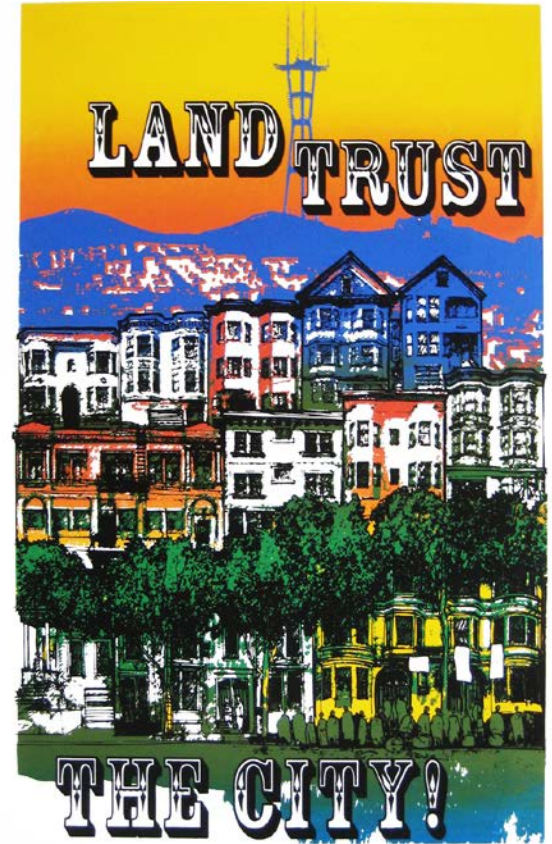
- **Berkeley**, Oakland, etc.
- Why we chose TOPA route (Berkeley):
 - Tenant empowerment and agency key to policy's success
 - Supports tenants in self-organizing and controlling future of their housing
 - Pathway to homeownership
 - Tenant buy-in often critical for successful nonprofit management
 - Tenant control of housing → greater stability and involvement in community

Berkeley TOPA Strategy/Timeline

- 2015-2016: Research; coalition-building (EBCLC, CLTs, tenants rights groups); finding local champions on City Council
- 2017: Advocacy. City Council lists SSP (preservation funding) and TOPA (policy) as top priorities. Coalition-building and research continues.
- 2018: Pilot funding program (SSP) launched. Policy development and drafting for Oakland + Berkeley. PLHA convening. Coalition-building cont.
- 2019: Community working group and Mayor's Office work closely to further develop policy. Feedback and focus groups.
- 2020: Policy introduced to city council (land-use) committee. Challenge grant awarded. Working in coalition to refine and pass policy.

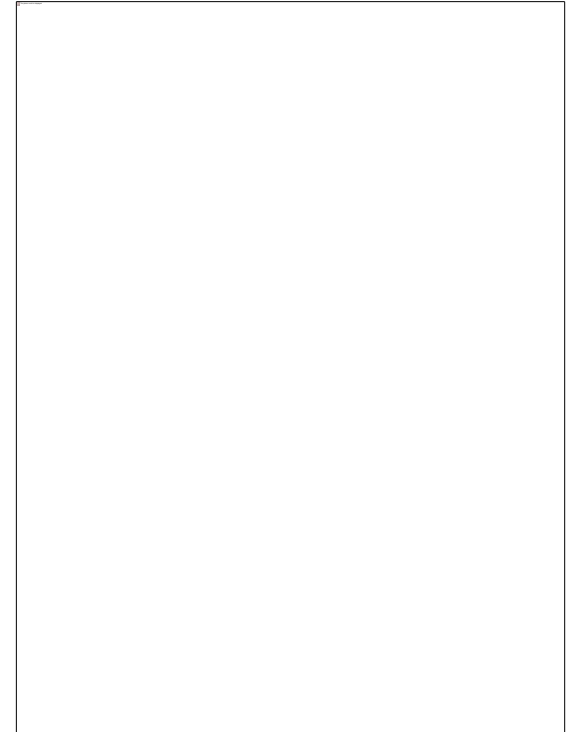
Community Opportunity to Purchase Act (“COPA”)

COPA is a San Francisco law passed in April 2019 which requires private owners of properties with three or more residential rental units to give Qualified Non Profits (QNP) a Right of First Offer and a Right of First Refusal.



COPA Strategy / Timeline

- 2009 - Create initial funding stream
- 2014 - Funded Acquisition Program rollout
- 2014 - Citywide Tenant Convention
- 2015 - Development of Preservation cohort
- 2016 - Neighborhood Housing Balance analysis
- 2016-19 - Policy development with tenant orgs, nonprofits, leveraging political support
- 2019 - COPA success supports funding



COPA Outcomes

PRESERVATION AS RENT RESTRICTED AFFORDABLE

- Buildings remain rent restricted affordable housing in perpetuity.
- Mean value of all rents not to exceed 80% AMI.
- New tenants' gross household income not to exceed 120% AMI.
- No tenant may be evicted without “just cause” as defined by S.F. Rent Ordinance.

COPA Components

- **QUALIFIED NON-PROFITS (QNP):** Rights are assigned to QNPs with demonstrated commitment to the provision of affordable housing for low- and moderate-income residents; commitment to community engagement; and acquisition and management capacity or partnership history
- **TIMELINES:** Timelines are shorter under COPA, as there is assumption that NonProfits can access bridge / acquisition loans (in SF, the Housing Accelerator Fund).

Ecosystem Requirements

In order for the “opportunity to purchase” to be a legitimately exercisable right, you need policies and programs to support it. These include, but are not limited to:

1. Tenant education, support and organizing (i.e. organizers, CLTs, lawyers)
2. Nonprofit and Agency Capacity
3. Robust financing for acquisitions and rehabilitation - acquisition loans and long-term financing

TOPA/COPA policy should be linked to funds to invest and/or leverage for the success of the program.

Lessons Learned

You Need Champions

- It can be difficult for policy to gain traction with competing housing/ land use policies
- Having a champion such as a mayor or council member who would sponsor is extremely helpful
- Having a grassroots organizing strategy is also important

Ground It in Community & Local Context

- Build a policy that addresses the needs of the community. Research local needs; conduct focus groups.
- Meaningfully engage tenants. May be difficult due to competing tenant protection priorities.

Requires A Diverse Array of Expertise

- TOPA/COPA spans so many technical areas. You need folks who have experience in data, real-estate, tenant protections, law, etc...
- A diverse group also helps with blind spots!

Current State Context

- Stable Homes CA, AB1703, where it ended this year
- SB1079 - applicability to distressed properties
- Sense of urgency?
- 2-year State legislative timeline - priorities?
- Enabling legislation at state level
- State financial incentives / tax abatement?

Resources

- <https://sfmohcd.org/community-opportunity-purchase-act-copa>
- <https://ebclc.org/topa/>
- <https://yes2topa.org/>
- <https://www.protectoaklandrenters.org/>
- https://ebclc.org/wp-content/uploads/2018/11/Final-PDF_Rooted-In-Home-Report.pdf

Questions?