

TOPA

Tenant Opportunity to Purchase Act



Introduction

- Development Team
 - Mayor's Office
 - Legal
 - Land Trust
 - City Staff
- Legislative History
 - 2015
 - Referral to Planning - 2018
- Process





Overview

- Why TOPA?
- Learning from similar programs
- How Berkeley TOPA works
- What have we heard?

Why TOPA?

The challenges:

- Disproportionate displacement of communities of color in Berkeley
- 2015 RHNA demonstrates significant unmet need for *affordable* housing production

The opportunities:

- Empower tenants
- Prevent displacement
- Create pathways to homeownership
- Preserve affordable housing

Learning from Similar Programs

- **Washington D.C.'s TOPA:** in existence for 40 years; at least 3,500 units purchased since 2002.
- **SF COPA:** unanimously passed by SF Board of Supervisors in 2019.
- **Learning lessons:**
 - Closing legal loopholes
 - No selling of rights
 - Criteria for QOs
 - Permanent affordability
 - Need for TA & City funding
 - ROFO & Incentives

Berkeley TOPA

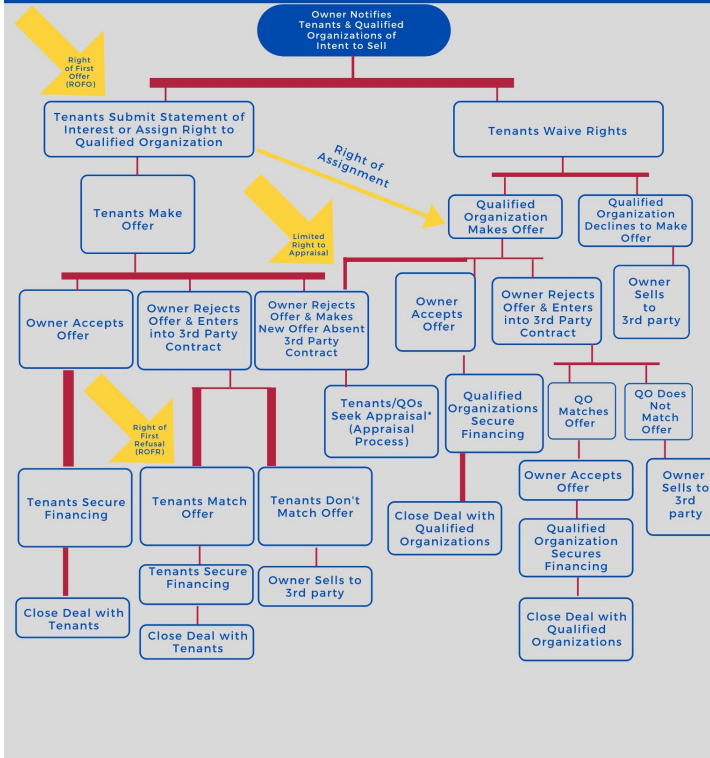
- TOPA applies *only* to rental properties and *only* when an owner is ready to sell.
- There are a number of exemptions.

Key Features of Berkeley's Policy

- ROFO & ROFR - primary right for tenants, secondary for QOs
- Incentives to owners
- Supportive partners to facilitate tenant success
- Permanent affordability
- Timelines
- Fair Market Value
- Preserving tenant protections

TENANT OPPORTUNITY TO PURCHASE ACT (TOPA)

How TOPA Works: The Basic Structure



Incentive to Participate

Refund to Seller of .75% of Property Transfer Tax

Examples:

\$1,500,000 sales price = \$11,250

\$5,000,000 sales price = \$37,500

\$10,000,000 sales price = \$75,000

Questions from the Public

Will property values plummet?

Will landlords be forced to participate?

How much will TOPA cost?

As a tenant, how can I afford this?

Will this only help some tenants?

How long does this process take?

Timelines

- Time necessary for tenants & QOs to exercise rights
 - Steps to submit offer: organize, select SP, decide on ownership structure, legally incorporate TO, assess feasibility, submit offer
- Realities of time necessary to secure financing
- Building implementation infrastructure over time can help streamline process

Owner jointly notifies tenants and QN's of intent to sell

Tenants have the following # of days to organize and submit SOI
1 or 2 units: 20 days
3+ units: 30 days
30+ units: up to 45 days
If tenants waive right, QOs have remaining time (**min. 5 days**) to submit SOI

Tenants have the following # of additional days to make an offer:
Single household: 21 days
2-unit or SFH with multiple households: 45 days
3+ units: 60 days
10-29 units: up to 90 days
30+ units: up to 120 days
If tenants don't make an offer, QOs have remaining time (**min. 5 days**) to submit offer

a) Seller accepts offer

Tenants (or QO) have the following # of days to secure financing:
SFHs with single household: 30 days
(up to 45 days w/ estimate from lender)
2-unit or SFH with multiple households: 90 days
(up to 120 days w/ estimate from lender)
3+ units: 120 days
(up to 160 days w/ estimate from lender)

14 calendar days to close

b) Seller rejects offer and enters into 3rd party contract

Single household: 10 days to accept (whether tenants or QOs purchasing)
Multiple households: Tenants have 30 days and QOs have **14 days** to accept (these are extended by up to 10 business days if tenants invoke right to appraisal)

Steps to making an offer:

1. Select a supportive partner
2. Select an ownership structure
3. Legally incorporate tenant organization
4. Register tenant organization w/ city
5. Assess financial feasibility
6. Draft and sign offer to purchase

Multiple Listing Service Data Multi-Tenant Property Sales in 2019

MLS Data		Avg DOM 2 units	30		TOPA Time to Close 2 units	85 - 139	Differential	55 - 109	days
*Sales in 2019 = 101		Avg DOM 3-9 units	43		TOPA Time to Close 3-9 units	224	Differential	181	days
*Multi-tenant properties		Avg DOM 10 - 29 units	44		TOPA Time to Close 10 - 29 units	254	Differential	210	days
Over/Under Sales Price		Financing							
Under Market	38	38%			Cash	24			
Over market	63	62%			Conventional	70			
Sold for asking	6	6%							

Cost of Program

- SF Foundation Challenge Grant
- Potential Structure
- Administration & Enforcement
- Cost of TOPA vs. New Affordable Housing

Proposed Edits

- Changes made from Realtor/Property Owner concerns
- Legal review edits



Closing

TOPA as an important tool

- Create long term affordable housing
- Empowerment and Stability to tenants
- Keep low income tenants in their homes
- Supports a diverse and equitable community

Questions



	First Right to Purchase						
	Time for Statement of Interest	Time to Submit Offer		Time to Secure Financing (following contract execution)		Time to Close	
	Tenant	Tenant	Qualified Organization	Tenant and Qualified Organization		Tenant and Qualified Organization	
Single Family with one Tenant	20 days	21 days	remaining time or 5 days whichever is greater	30 days	up to 45 days with letter from lender requiring more time	14 days	if diligently pursuing close reasonable extension granted
2-unit Property and Single Family with multiple Tenant Households	20 days	45 days	remaining time or 5 days whichever is greater	90 days	up to 120 days with letter from lender requiring more time	14 days	if diligently pursuing close reasonable extension granted
3 to 9 Unit Properties	30 days	60 days	60 days or remaining time if Tenant waives or 5 days, whichever is greater	120 days	up to 160 days with letter from lender requiring more time	14 days	if diligently pursuing close reasonable extension granted
10 to 29 Unit Properties	30 days	60 days + 30 day extension (90 days)	60 days + 30 day extension or remaining time if Tenant waives or 5 days, whichever is greater	120 days	up to 160 days with letter from lender requiring more time	14 days	if diligently pursuing close reasonable extension granted
30+ Unit Properties	30 days + 15 day extension (45 days)	60 days + 2 30 day extensions (120 days)	60 days + 2 30 day extension or remaining time if Tenant waives or 5 days whichever is greater	120 days	up to 160 days with letter from lender requiring more time	14 days	if diligently pursuing close reasonable extension granted
	Right of First Refusal						
	Time to Accept Offer		Time to Secure Financing (following contract execution)		Time to Close		
	Tenant	Qualified Organization	Tenant and Qualified Organization		Tenant and Qualified Organization		
Single Family with one Tenant	10 days	10 days	30 days	up to 45 days with letter from lender requiring more time	14 days	if diligently pursuing close reasonable extension granted	
2-unit Property and Single Family with multiple Tenant Households	30 days	14 days	90 days	up to 120 days with letter from lender requiring more time	14 days	if diligently pursuing close reasonable extension granted	
3 to 9 Unit Properties	30 days	14 days	120 days	up to 160 days with letter from lender requiring more time	14 days	if diligently pursuing close reasonable extension granted	
10 to 29 Unit Properties	30 days	14 days	120 days	up to 160 days with letter from lender requiring more time	14 days	if diligently pursuing close reasonable extension granted	
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