

Mayor's Office of Housing and Community Development
City and County of San Francisco



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Mayor

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Director

**Community Opportunity to Purchase Act (COPA)
Frequently Asked Questions**

This FAQ does not constitute legal advice. Please consult with a real estate professional or real estate attorney if you have questions.

Q: What is Community Opportunity to Purchase Act (COPA)?

A: The Community Opportunity to Purchase Act, or COPA, is a new City law that gives qualified non-profit organizations the right of first offer and/or the refusal to purchase eligible properties on the market to prevent tenant displacement and create long-term affordability. The text of the ordinance can be found [here](#).

Q: When does the legislation go into effect?

A: COPA went into effect on September 3rd, 2019. The Mayor's Office of Housing and Community Development (MOHCD) amended the COPA ordinance on November 13, 2020.

Q: What properties are subject to COPA?

A: COPA applies to Multi-Family Residential Buildings, which are defined as privately-owned real property within San Francisco on which (a) 3 or more residential units exist, including without limitation mixed use properties; (b) lots on which 3 or more residential units are under construction; and (c) vacant lots on which 3 or more residential units could be built under the Planning Code and other applicable laws.

Q: Does COPA apply to the sale of a single TIC (Tenancy-In-Common) interest with a contractual right of exclusive occupancy in Properties with 3 or more residential units?

A: Yes. The sale of a Property that has multiple owners will be considered a transfer of a single interest of the Property if the transfer by each owner is made in connection with substantially the same transaction or set of transactions related to the sale of the entire Property.

However, the sale of an individual property interest in a Property, such as that of one partial owner in a tenancy in common (regardless of percentage ownership), will not be considered a Property sale if such transfer or sale is not substantially connected with the transaction or set of transactions for sale of all property interests in the Property.

Q: Does COPA apply to the sale of a Property with 2 legal residential units and a 3rd illegal or "inlaw" unit?

A: No. All units of a subject residential Property must be legal residential units and conform to legal requirements, such as Building Code standards or permit provisions.

Q: Does COPA apply to a mixed-use commercial property that includes more than 3 legal residential units?

A: Yes. COPA applies to all residential Properties on which (a) 3 or more residential units exist, including without limitation mixed use properties; (b) lots on which 3 or more residential units are under construction; and (c) vacant lots on which 3 or more residential units could be built under the Planning Code and other applicable laws.

Q: In regard to vacant land, COPA only applies to property that is currently zoned for 3+ units without a variance. How do recent laws regarding lot splits and ADU construction factor into the computation of 3+ units for vacant lots?

A: The Seller of a vacant lot must comply with COPA if the San Francisco Planning Code and other City laws, including zoning requirements, permits the use as residential and would allow the development of at least three residential units (i.e. by right). For example, a Seller would not need to comply with COPA if a Buyer would need to obtain a variance or conditional use approval to develop 3 units or more on the vacant lot. Each permitted or constructed ADU would be considered a lawful unit of the Property.

Q: Are any properties exempt or excluded from COPA?

A: Yes. But the exemptions are limited. First, there is an exemption for certain existing rights, such as purchase agreements and options in effect before September 3, 2019. Second, the following transactions are excluded from COPA: (1) Deeds of Trust; (2) Foreclosures; (3) Bankruptcy Transfers; (4) Transfers by Federal or State Entities; (5) Transfers into Living Trusts or of the property in probate to an heir (but NOT probate sales to third parties); (6) Transfers between spouses, domestic partners and certain other family members; and (7) Certain transfers by Nonprofits. Otherwise, the property and transaction are governed by COPA.

Q: How does COPA apply to Probate Sales to Third Parties?

A: Probate Sales to Third Parties must comply with COPA after the court confirmation process.

Q: What are QNPs? If your property is subject to COPA, which “QNPs” must be notified?

A: QNPs are Qualified Nonprofit Organizations. You can find the current list of QNPs [HERE](#).

Q: What is required in Seller’s Notice of Sale to QNPs?

A: A Seller’s Notice of Sale to QNPs must contain at least the following:

- (i) Seller’s intent to sell the Property;
- (ii) The number of residential rental units in the Property;
- (iii) The address of each rental unit;
- (iv) The rate of rent due for each unit.

Q: Is the Seller required to disclose the proposed list price to QNPs as part of the Seller’s Notice of Sale?

A: No. The proposed list price is not required in the Seller’s Notice of Sale to QNPs.

Q: Is the inclusion or exclusion of a list price and any subsequent alteration in the list price in the MLS or elsewhere is discretionary for the Seller?

A: The inclusion or exclusion of a list price in the Seller’s Notice of Sale to QNPs is discretionary. However, if a QNP expresses interest in the property through their Right of First Offer and/or Right of First Refusal, and the Seller must disclose the list price if requested by the QNPs. Also, any changes in terms of the sale of the property, including list or sales price, will require the Seller to submit a new Seller’s Notice of Sale to interested QNPs.

Q: What must a Seller initially do to comply with COPA before listing or otherwise selling a Property?

A: Sellers must first provide the Notice of Sale discussed above to all QNPs on the Agency's list and then follow the rules for Right of First Offer and Right of First Refusal.

Q: What is COPA's Right of First Offer?

A: Once the Seller delivers the Notice of Sale, QNPs have 5 calendar days to provide written notice to the Seller expressing interest in purchasing the Property.

Q: What is COPA's Right of First Refusal?

A: If a Seller receives a Third Party (non-QNP) offer to purchase their Property and wishes to accept that offer, the Seller must offer the Property for purchase to a QNP on the same terms and conditions. The Seller must include in the terms and conditions the identical price and amount of commission to be paid to the Third Party purchaser's broker. QNPs have thirty days to exercise their Right of First Refusal.

Q: How much time must Sellers give QNPs to respond to a Seller's Notice of Sale?

A: Sellers must provide any QNP receiving the Notice of Sale five (5) calendar days in which to notify Seller that they wish to consider making an offer for the Property.

Q: What happens after 5 days after the Notice of Sale and there no QNP responses?

A: If no QNP makes an offer for the Property during this period, a Seller may proceed with listing and marketing the Property, and offer to sell the Property to other purchasers.

Q: What happens if the Property is not sold?

A: If, within one year of providing the Notice of Sale and the Seller has not executed a purchase and sale agreement for the Property, the Seller must provide each QNP with a new Notice of Sale indicating Seller's continued intent to sell the Property. Each year thereafter on that date, the Seller must provide QNPs with a Notice of Sale until the Property is sold.

Q: What happens if I no longer want to sell the Property?

A: If the Seller elects to not sell the Property, the Seller shall provide each QNP with written notice that the Seller no longer intends to sell the Property.

Q: If a QNP timely responds and expresses interest in the Property, what must a Seller do?

A: If a QNP expresses interest in the Property, the Seller must disclose to each such QNP via e-mail any available contact information for any tenant(s) in each rental unit, or convey that the Seller does not have any such information to disclose ("Tenant Disclosure"). Tenant Disclosure information must include:

1. Name(s) and any available contact information for any tenant(s) in each rental unit, as well as any available contact information for each tenant;
2. The number of beds and baths of each unit;
3. The move-in dates of each tenant;
4. Base rent for each rental unit;
5. Building costs passed through to each tenant, if any;
6. Whether each tenant has a written lease or rental agreement; and

7. The annual expenses for the Building, including, but not limited to, management, insurance, utilities, and maintenance

Seller may also provide additional information about the Property in its discretion. Such Qualified Nonprofit may submit a written offer to the Seller within twenty-five (25) calendar days of the Tenant Disclosure.

Q: If the Seller accepts an offer by a QNP, what must a QNP do?

A: If a QNP expresses interest in the Property, the QNP must notify every other QNP in writing of its decision to accept the Seller's offer to sale the Property.

Q: If a seller has already complied with COPA and their building is still on the market, does the subsequent addition of a new qualified QNP to the current QNP list require the seller to begin the process anew?

A: No. If the building is still on the market and a new QNP has been added to the QNP list, the Seller does not need to begin the Notice of Sale process anew. However, if there are any changes to the terms of the Sale of the property or listing of the property, the Seller must provide an updated Notice of Sale to the QNPs.

Q: If the Seller accepts an offer by a QNP, is there a mandatory time for due diligence or financing contingencies?

A: Yes. Under these circumstances, a QNP would have 60 days to conduct due diligence and secure financing. If the QNP is not able to secure financing in 60 days, then the Seller is free to list the Property on the open market.

Q: What actions constitute "removing the property from the market" which would trigger the Seller to begin the notification process anew?

A: Every year after the anniversary date of the Seller's Notice of Sale, if the Building remains for sale, the Seller shall provide each Qualified Nonprofit with a new notification of the Seller's continued intent to Sell the Building, and at that time shall provide each Qualified Nonprofit with a new opportunity to make an offer to Purchase the Building until the Building is Sold to a Qualified Nonprofit or a Purchaser, as applicable. If the Seller elects to not Sell the Building, the Seller shall provide each Qualified Nonprofit with written notice that the Seller no longer has intent to Sell the Building.

Q: What if an Owner of a Property subject to COPA receives an unsolicited purchase offer?

A: The transaction is subject to COPA. Seller may accept or counter such an offer, subject to a contingency that no QNP exercises the Right of First Refusal.

Q: If a seller prematurely markets the property and subsequently realizes that they have not met the COPA requirements, may the seller just start from the beginning with the 5 day notice to all QNPs? Or must they wait for a market offer and then give all QNPs a 30-day right of first refusal?

A: Seller must start from the beginning of the COPA noticing period and follow all requirements as part of the COPA notification process.

Q: Are there any special COPA filing requirements Sellers must satisfy?

A: Yes. Every Seller of a multi-unit residential property must submit a COPA Seller Declaration Form to MOHCD under penalty of perjury affirming that they complied with the COPA legislation. The Declaration **must be submitted within 15 days after the sale**. The COPA Seller Declaration form can be found [HERE](#). The form should be submitted to: copa.mohcd@sfgov.org or mailed to:

Mayor's Office of Housing and Community Development
Attn: COPA Seller Declaration Form
1 South Van Ness Ave, 5th Floor
San Francisco, CA 94103

Q: Are There Fines, Penalties or Risks of Claim If a Seller Violates COPA?

A: Yes. If a Seller violates the COPA legislation, a QNP may file civil legal actions against the Seller and seek recovery of their attorney's fees. Damages from the civil legal action shall equal the difference between the market price of the Property at the time of the sale in violation of COPA, and the price which the QNP could have purchased the Property at the time when damages are awarded, i.e., at the time of a future trial some months or years later. Where the Seller's violation of COPA has been found to be "knowing or willful" civil penalties may be assessed, which are presumed to equal 10% of the value of the multi-unit residential Property for the first violation, 20% for the second violation, and 30% for any subsequent violation. Fines may also be sought by the City. Any party who "willfully colluded" with a Seller to violate COPA may also be subject to a civil action under COPA. Certain fines apply for a Seller's failure to file a Declaration.

Q: Are there protections for existing tenants of COPA purchased properties?

A: Yes. Each existing residential tenant in the Building will be permitted to retain that tenant's existing leasehold interest, including subleases, according to the terms of that tenant's existing lease.

Q: Are there Rent Restrictions for COPA purchased Properties?

A: Yes. QNPs must maintain COPA purchased Properties as rent-restricted affordable housing in perpetuity.

Q: What are the affordability levels for COPA purchased Properties?

A: The average of all rent and utilities paid by all residential tenants must not exceed the amount that is equal to 30% of 80% of Area Median Income, as adjusted for household size. QNPs have the sole responsibility to ensure that such average is maintained for a Building purchased under COPA. Gross household income of any new tenants in the Building will not exceed 120% of Area Median Income, as adjusted for household size.

Q: Is there a form of the Notice of Special Restriction (NSR) provided by MOHCD for use by QNPs?

A: Yes. You can find a form of the NSR [HERE](#).

Q: Can COPA purchased Properties be converted into Limited Equity Housing Cooperatives (LEHC)?

A: Yes. QNPs may convert COPA purchased properties as rent-restricted affordable housing into a limited equity housing cooperative under Subdivision Code Division 11, provided that such QNPs shall fully comply with the requirements of Subdivision Code Division 11 and these COPA purchased Properties remain restricted as affordable housing in perpetuity under a new Notice of Special Restriction.

Q: Are there any potential incentives for QNPs who wish to purchase properties using COPA?

A: Yes.

1. Partial City Transfer-Tax Exemption. The increased tax rate imposed by subsections (d), (e), and (f) of Business and Tax Rules Code Section 1102 will not apply to a transfer of property under Section 41B.6 of the ordinance.
2. Potential Federal Tax Benefits. Any Qualified Nonprofit that purchases a Building under the Right of First offer pursuant to Section 41B.6 will work with the Seller to facilitate the realization of any federal tax benefits available under 26 U.S.C. § 1031.