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
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

<table>
<thead>
<tr>
<th>MLS Data</th>
<th>Avg DOM 2 units</th>
<th>TOPA Time to Close 2 units</th>
<th>Differential</th>
<th>55 - 109 days</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Sales in 2019 = 101</td>
<td>30</td>
<td>85 - 139</td>
<td>55 - 109</td>
<td></td>
</tr>
<tr>
<td>*Multi-tenant properties</td>
<td>43</td>
<td>224</td>
<td>181 days</td>
<td></td>
</tr>
</tbody>
</table>

| Avg DOM 3-9 units         | 43              | 254                        | 210 days     |
| Avg DOM 10 - 29 units     | 44              |                            |              |

<table>
<thead>
<tr>
<th>Over/Under Sales Price</th>
<th>Financing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under Market</td>
<td>Cash</td>
</tr>
<tr>
<td>Over market</td>
<td>Conventional</td>
</tr>
<tr>
<td>Sold for asking</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>24</td>
</tr>
<tr>
<td>63</td>
<td>70</td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>Tenant</th>
<th>Time to Statement of Interest</th>
<th>Time to Submit Offer</th>
<th>Time to Secure Financing</th>
<th>Time to Close</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family with one Tenant</td>
<td>20 days</td>
<td>21 days</td>
<td>remaining time or 5 days whichever is greater</td>
<td>30 days up to 45 days with letter from lender requiring more time</td>
</tr>
<tr>
<td>2 Unit Property and Single Family with multiple Tenant Households</td>
<td>20 days</td>
<td>45 days</td>
<td>remaining time or 5 days whichever is greater</td>
<td>45 days up to 120 days with letter from lender requiring more time</td>
</tr>
<tr>
<td>4 to 9 Unit Properties</td>
<td>30 days</td>
<td>60 days</td>
<td>or remaining time if Tenant waives or 5 days whichever is greater</td>
<td>120 days up to 480 days with letter from lender requiring more time</td>
</tr>
<tr>
<td>10 to 29 Unit Properties</td>
<td>30 days + 30 day extension (if day)</td>
<td>60 days + 30 day extension or remaining time if Tenant waives or 5 days whichever is greater</td>
<td>120 days up to 360 days with letter from lender requiring more time</td>
<td>18 days if diligence pursuing close reasonable extension granted</td>
</tr>
<tr>
<td>30+ Unit Properties</td>
<td>30 days + 13 day extension (if day)</td>
<td>60 days + 13 day extension or remaining time if Tenant waives or 5 days whichever is greater</td>
<td>120 days up to 540 days with letter from lender requiring more time</td>
<td>18 days if diligence pursuing close reasonable extension granted</td>
</tr>
</tbody>
</table>

### Right of First Refusal

<table>
<thead>
<tr>
<th>Tenant</th>
<th>Time to Accept Offer</th>
<th>Time to Secure Financing</th>
<th>Time to Close</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family with one Tenant</td>
<td>10 days</td>
<td>10 days</td>
<td>30 days up to 45 days with letter from lender requiring more time</td>
</tr>
<tr>
<td>2 Unit Property and Single Family with multiple Tenant Households</td>
<td>30 days</td>
<td>14 days</td>
<td>90 days up to 120 days with letter from lender requiring more time</td>
</tr>
<tr>
<td>4 to 9 Unit Properties</td>
<td>30 days</td>
<td>14 days</td>
<td>120 days up to 360 days with letter from lender requiring more time</td>
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