

# San Francisco Nonprofits Granted Right of First Offer to Purchase Residential Buildings With Three or More Units

On April 16, 2019, the San Francisco Board of Supervisors unanimously approved the Community Opportunity to Purchase Act (COPA). The Mayor signed the legislation on May 3, 2019. COPA grants certain qualified nonprofit organizations the right of first offer and right of first refusal on sales of privately-owned buildings with three or more residential units and privately-owned property on which three or more residential units *could* be built.

## What is a "sale"?

A sale is broadly defined as the transfer of a fee interest in the building for money or anything of economic value, or the transfer of shares or other interests that are equivalent to selling a building. There are exceptions, including but not limited to transfers pursuant to a foreclosure, transfers to heirs, and transfers among defined family members.

## What is a "qualified nonprofit"?

San Francisco will maintain a list of qualified nonprofits under COPA. Any building purchased by a qualified nonprofit under COPA must be maintained as rent-restricted affordable housing in perpetuity.

## What is the "right of first offer"?

Before a seller of a building of three (3) or more dwellings is permitted to offer the building (or is permitted to offer land "capable of being built into three or more units"), the seller must notify each qualified nonprofit listed with the City of its intent to sell. The notification must identify the number and address of the residential units, as well as the rate of rent due for each unit. Each qualified nonprofit has five calendar days to notify the seller of its intent to make an offer. If an offer is made, the seller must disclose the names and contact information of all residential tenants. The qualified nonprofit then has 25 additional calendar days to conduct due diligence, secure financing, and make an offer. The seller is free to accept or reject any offer. If the seller rejects all offers, or if no qualified nonprofit makes an offer, the seller can offer the building for sale to the public.

## What is the "right of first refusal"?



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When a seller thereafter receives an offer from a prospective purchaser which is not a nonprofit, and then the seller wishes to accept, the seller must offer to sell the building under the same terms and conditions to each qualified nonprofit that made an offer during the right of first offer period. Each qualified nonprofit then has five calendar days to accept or reject the offer.

### **What are the enforcement mechanisms?**

Qualified nonprofits are permitted to bring suit against sellers who do not comply with COPA and against buyers who allegedly collude with a seller to avoid COPA. Remedies in a COPA litigation include damages, civil penalties, and attorneys' fees.

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