

San Francisco Sellers: COPA Now in Effect

The San Francisco Mayor's Office of Housing and Community Development released its much-awaited Community Opportunity to Purchase Act (COPA) [Program Rules](#) on Monday, September 3, 2019. (The mayor signed [COPA](#) on May 3, 2019. More information about the legislation can be found in our [previous update](#).)

When is COPA Effective?

Under the rules, the effective date of COPA is September 3, 2019. The rules also provide that any contract to purchase property entered into before September 3, 2019, or any modification or extension of that contract, are not required to comply with COPA. However, if a contract entered into before September 3, 2019 is terminated, then COPA will apply to any subsequent contract.

Under the Rules, What Sales Must Comply with COPA

Generally, COPA grants qualified nonprofits a right of first offer (ROFO) and a right of first refusal (ROFR) on multi-family property—residential buildings of three units or more, and vacant lots that could be developed into residential units of three units or more.

Sales of vacant lots must comply with COPA only 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." In other words, it would appear only entitled projects that could be developed into three or more units would need to comply with COPA.

A transfer of a single interest owned by multiple owners of a building need only comply with COPA if the sale is "made in connection with substantially the same transaction or set of transactions" related to the sale of the *entire* building. While not specified, COPA would likely apply to any transfer of interest, whether a tenancy-in-common, membership interest in a limited liability company or transfer of shares of a partnership or corporation which owns a building subject to COPA.

Mechanics of the ROFO and ROFR

The rules for notice and exercise of the rights of first offer and refusal are substantially parallel to COPA and follow the procedures specified under COPA.

In order to exercise the right of first offer, a seller must deliver a notice of sale outlining their intent to sell. This notice of sale must then be emailed to the qualified nonprofits and the Mayor's Office of Housing and Community Development. Each qualified nonprofit has 25 days after the receipt of the notice of sale to submit a written offer to the seller to purchase the building. If the seller accepts the offer, the purchase agreement must allow 60 days for the qualified nonprofit to conduct due diligence investigations and secure financing. The rules do not specify when the transaction must close.

If a seller rejects a qualified nonprofit's offer to purchase, then the seller can proceed to sell the building to a third party. In this case the sale of the building will be subject to a right of first refusal in favor of the qualified nonprofit. The right of first refusal may only be exercised in two ways. The first is by a qualified nonprofit whose first offer was rejected by the seller, in which case such qualified nonprofit has five days to exercise the right of first refusal. Alternatively, a qualified nonprofit that did not receive a notice of sale regarding their right of first offer will have 30 days to exercise their right of first refusal.

Sellers Must Re-Offer the Multi-Family Property if Terms of the Third-Party Purchase Deal Materially Change

If the right of first offer and the right of first refusal are rejected, the seller may proceed to sell the building to a third-party purchaser. If at any point a seller and prospective third-party purchaser materially change the terms of the deal, the new terms must again be offered to the qualified nonprofits. "Material changes" will be reviewed on a case-by-case basis, providing little guidance to sellers. However, the rules provide the following examples: "changes to the parties to the contract, the financial terms, the property, or performance under the contract."

Seller Declaration

Sellers must provide the Mayor's Office of Housing and Community Development with a "hard copy" of a notarized, signed declaration, under penalty and perjury, affirming that the sale of that building complied with the requirements of COPA. A copy of the form declaration is posted on the city's website. The rules do not specify whether a "wet" signature is required, but a PDF will not be accepted. Since the city's website states that the mayor's office "will create an e-mail address for Sellers to submit declarations," it remains unclear if sellers will always be required to submit hard-copy declarations or if electronic copies will suffice in the future.

Certification Process for Qualified Non-Profits

The rules standardized the Mayor's Office of Housing and Community Development's certification process for qualified nonprofits. The office will solicit applications at least once a year, so sellers should proactively check the list prior to selling multi-family property to determine whether the list of qualified nonprofits has been updated. Each qualified nonprofit's certification is valid for a three-year term, renewable through the general application process. The initial list of qualified nonprofits can be found [here](#).

Takeaways

The mechanics of the rights of first offer and refusal process will likely extend the time it takes to close sale transactions. Sellers will need to provide for conditional approvals of any purchase contract subject to the qualified nonprofit's rights of first offer and refusal under COPA. As COPA likely will be a constantly shifting landscape, we will continue to monitor the legislation and rules and report back with new developments.

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