

ADVISORY FOR SELLERS & BUYERS OF REAL PROPERTY SUBJECT TO THE COMMUNITY OPPORTUNITY TO PURCHASE ACT (“COPA”)

SAN FRANCISCO ASSOCIATION OF REALTORS® STANDARD FORM [COPAADV]

This form is intended for use in San Francisco

What is COPA?

On April 23, 2019, the San Francisco Board of Supervisors approved the Community Opportunity to Purchase Act (S.F. Adm. Code §§41B.1-41B.14 [“COPA”]), a law intended to “stabilize communities by preventing displacement and preserving affordable housing.” It can be read at www.SFARforms.com/COPAOrdinance. The Mayor's Office of Housing and Community Development (“MOH”) promulgated Rules and Regulations as required by the Act, which can be found at www.SFARforms.com/COPARules (“Rules”). A broad summary of COPA's provisions, including its step-by-step requirements, is set forth below. It does not cover, however, every possible COPA issue. Seller and Buyers should review COPA and its Rules, and seek the advice of a qualified San Francisco real estate attorney with any questions concerning this new law and its application to a specific property or transaction. Real Estate Brokers/Agents are not qualified to provide such legal advice.

When Did COPA Start?

COPA started applying to certain transactions on September 3, 2019. From that date forward, owners of properties subject to COPA who decide they wish to sell must first comply with a process that provides certain Non-Profit Organizations (“QNP”) two preferential purchase rights, a *Right of First Offer* and a *Right of First Refusal*.

Are There Any Exemptions?

Yes. Sellers of properties subject to COPA that were “under binding contract” **before** September 3, 2019 are generally exempt. Other exemptions may apply, such as where there is an option or a lease/option to buy agreement in effect before September 3, 2019, and on or after that date a tenant exercises its option to buy. Sellers should seek the advice of a qualified San Francisco real estate attorney with any questions about whether an exemption applies to their property.

What Properties are Subject to COPA?

COPA does **not** apply to the sale of (i) single family homes or condominium units; (ii) Tenancy-in-Common or “TIC” interest with contractual right of exclusive occupancy to a single residential unit in a 3+ residential building, unless the sale is substantially connected with a set or series of such transactions to sell the entire property; or (iii) duplexes.

COPA instead **only applies** to certain multi-unit residential properties located in San Francisco; in particular, properties improved with 3+ residential units (including mixed-use properties with 3+ residential units; but excluding illegal residential units), any property on which 3+ residential units are under construction AND vacant lots which are currently zoned for the construction of 3+ residential units.

Are There Any Exclusions for Transactions Involving Properties Otherwise Subject to COPA?

Yes, but they are limited. 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 QNPs. The List of QNPs can be found at the MOH website or in hard copy at its offices. (See MOH contact information below).

What COPA Does - Statutory Creation of Two Purchase Rights for Certain QNPs

The *Right of First Offer* (RFO) applies when a Seller decides to sell a COPA property. Before a Seller may offer such a property for sale to any buyer other than a QNP or otherwise solicit any such private buyer offer, the Seller must first provide a formal notice via email to all QNPs listed at the MOH website. Thereafter, Seller must follow a series of steps depending upon how the QNPs respond. Those steps are summarized below.

In contrast, the *Right of First Refusal* (RFR) applies only to QNPs that made a first offer which the Seller rejected or any QNP that was not given the opportunity to make such an offer. When the RFR applies, Sellers again must follow a series of steps to comply with COPA which are summarized below. But Sellers can, by law, accept an unsolicited offer from a private buyer conditionally and with the express provision that the sale will not occur if any QNP holding a right of first refusal exercises that right. (See SFAR COPA – PURCHASE AGREEMENT CONTINGENCY ADDENDUM form.)

Basic Steps Necessary to Satisfy the Right of First Offer

The basic steps a Seller must satisfy to comply with the Right of First Offer requirements are as follows:

RIGHT OF FIRST OFFER STEPS	TIMING/DUE DATE
Step 1: Notify QNPs of intent to sell and provide an initial Property Description disclosure identifying the number of units, their addresses, and the rental rates for each unit.	Seller must provide such notice before exhibiting the Property to any private buyer or allowing a buyer entry for inspection, making any offer for sale to private buyers or soliciting any private buyer offers, such as by listing the Property on the SFAR Multiple Listing Service or by any other means.
Step 2: Give QNPs time to respond to Seller's notice.	QNPs have until 11:59 PM on the 5th full calendar day after Seller's Notice of Intent to Sell to express an interest in buying.
Step 3A: Where NONE of the QNPs expresses an interest in making an offer to buy the Property: Stop. RFO process is completed. Seller may now market and sell to private buyers subject only to an RFR for any QNP that was not given an opportunity to make a first offer (See RFR Steps below.)	Sellers may "immediately" so proceed if no QNP timely expresses an interest in buying the Property.
Step 3B: Where ANY QNP expresses an interest in making an offer to buy the Property: Provide a further Property Description disclosure to each such QNP which provides the tenants' names and their available contact information, the number of bedrooms and baths in each rental unit, each tenant's move-in date, the base rent for each rental unit, building costs passed through to each tenant, if any, whether there is a written lease or rental agreement, and the annual expenses for the Property, including management, insurance, utilities and maintenance.	No due date but advisable to do so promptly as QNP retains the right to make an offer. QNPs have 25 additional calendar days from the date of receipt of the further Property Description disclosure to decide whether to make an offer to purchase.
Step 3C: If any QNP expresses an interest in making an offer to buy the Property, provide each tenant at the Property an information sheet prepared by the Mayor's Office of Housing, containing a brief overview of COPA and MOH's Small Sites Program	No such "information sheet" has been prepared by the MOH as of the revision date of this form. SFAR has prepared notice of the nonexistence of such "information sheet" for Sellers to provide to tenants pending preparation of such sheet.
Step 4: Give all QNPs that have expressed an interest in making an offer time to respond.	Such QNPs have 25 additional calendar days from the date of receipt of the further Property Description Disclosure to decide whether to make an offer to purchase.
Step 5A: Seller must Accept or Reject each timely QNP offer, if any.	No due date but advisable to do so promptly as any QNP's offer remains effective pending Seller's response.
Step 5B: If no QNP timely makes an offer, Stop. Right of First Offer process completed. Seller may now market and sell to private buyers subject only to Right of First Refusal for any QNP that made an offer that was rejected or was not given an opportunity to make an offer (See RFR Steps below.)	Sellers may "immediately" so proceed if no QNP timely makes an offer within such 25- day period.
Step 6A: If Seller accepts a QNP's offer, the QNP is entitled to certain due diligence and financing contingency time periods, unless otherwise negotiated and agreed in writing.	Such QNPs have 60 additional calendar days to complete due diligence and secure financing, unless the parties expressly agree otherwise.
Step 6B: If all QNP offers are rejected, Stop. Right of First Offer process completed. Seller may now market and sell to private buyers subject only to Right of First Refusal for any QNP that made an offer that was rejected or was not given an opportunity to make an offer (See RFR Steps below.)	Sellers may "immediately" so proceed.

Basic Steps Necessary to Satisfy the Right of First Refusal

The basic steps a Seller must satisfy to comply with the Right of First Refusal requirements are as follows:

RIGHT OF FIRST REFUSAL STEPS	TIMING/DUE DATE
Step 1: If no QNP made an offer during the Right of First Offer process and all QNPs had the opportunity to make such an offer, Stop. Sellers are then free to market and sell to private buyers; COPA has been satisfied.	Under such circumstances, Sellers may “immediately” so proceed. Sellers are still required to file a Notice of Compliance (COPA9 form) with MOH within 15 days of closing escrow.
Step 2: If any QNP made a first offer that Seller rejected, or any QNP did not have an opportunity to make such an offer (such as if Seller received an unsolicited offer), Seller must provide such QNP via email with notice of the Right of First Refusal together with all disclosures provided to private buyers and thereafter upon request exhibit the Property to or allow inspection by each QNP that has expressed an interest in the Property.	No due date but advisable to do so promptly as QNPs retain RFR rights pending such notice.
Step 3: QNPs must then timely exercise their RFR and consummate the transaction on the same terms and conditions as in the private offer, including if it has no due diligence or inspection contingency.	Two applicable time periods for QNPs to exercise the RFR: <i>For QNPs that made a first offer that was rejected:</i> 11:59 PM on the 5th full calendar day after QNP receives such notice; OR, <i>For QNPs that were not given an opportunity to make a first offer:</i> 11:59 PM on the 30th full calendar day after QNP receives such notice and a complete Property Description Disclosure, including with the names of all tenants and their contact information.
Step 4A: If no QNP timely exercises its RFR, Seller is free to proceed to accept the private offer or consummate a conditional agreement with a private buyer arising from such an offer, unless material changes are made to the terms and conditions of the private offer agreement.	Under such circumstances, Sellers may “immediately” so proceed after the applicable time for QNPs to exercise their RFR. (See * below)
Step 4B: If any QNP timely exercises its RFR, it must then consummate the transaction with Seller on the same terms and conditions as offered by the private buyer. (Note: In the event more than one QNP exercises the <i>Right of First Refusal</i> , the first QNP to do so will be in contract to the exclusion of all other QNPs.)	Any due diligence or financing contingency periods remain the same as in the private buyer's offer, as does the time to close escrow.

***If there is any material modification of the terms of the Agreement, (for example a price reduction or credit resulting from property inspections), it may give rise to a new statutory obligation to give the QNPs another *Right of First Refusal* and a reactivation of the RFR for QNPs. Sellers and Buyers should seek the advice of a qualified San Francisco real estate attorney before making any such contract modifications or with any questions as to whether RFRs would be reactivated.**

Must a Seller File Anything after Closing Escrow on a Property Subject to COPA?

Yes. A seller of a property subject to COPA must file a Certification of Compliance with MOH within 15 days after close of escrow (COPA, §41B.10(a)).

What if Seller does not sell within 1 year of providing the Notice to QNPs (or thereafter) or decides not to sell?

A new Notice to QNPs must be provided one year after the first such Notice, and each year thereafter as long as a Seller does not complete the sale of the Property and maintains the intent to sell. Following each such notice, the right of each QNP under COPA to make an offer to buy the Property is reinstated. If at any time Seller decides not to sell the Property, Seller must provide all QNPs notice of such election and shall remain bound to COPA if Seller later renews the intent to sell. (COPA, §41B.6(b)).

Are there Any Tax Benefits for Sellers Who Accept an Offer by a QNP?

Yes. The transfer tax payable on sales to a QNP is fixed at \$7.50 per \$1,000, so a Seller of a Property above \$5,000,000 would benefit.

Are there Fines, Penalties or Risks of Claim if a Seller Violates COPA?

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 building at the time of the sale in violation of COPA, and the price which the QNP could have purchased the building 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 building 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.

Sellers and Buyers can obtain further information on COPA from the MOH. Its offices are located at 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103, and its staff can be reached at (415) 701-5500 or sfhousinginfo@sfgov.org. Information is also available at the MOH website (www.SFARforms.com/MOHCD).

Sellers and Buyers seeking advice or having any questions regarding COPA should engage a qualified San Francisco real estate attorney and tax advisor with respect to any impact upon any planned or pending 1031 Exchange. Real estate Brokers/Agents are not qualified to provide legal or tax advice and will not be checking public records.

Seller / Buyer _____ Date _____ Seller / Buyer _____ Date _____

BROKERS/AGENTS CAN ADVISE ON REAL ESTATE TRANSACTIONS ONLY. FOR LEGAL OR TAX ADVICE, CONSULT A QUALIFIED ATTORNEY OR CPA.