

Tenant and Community Opportunity to Purchase Policies

Implementation Lessons and Impact Prospects

Summary

TOPA has a 40-year history in Washington, D.C., showing its feasibility and potential impact.

Tenant and Community Opportunity to Purchase Act (TOPA or COPA) policies are being proposed around the country, with potentially substantial impacts on housing affordability, community stability and power, and tenant quality of life. These policies give tenants or their representatives (in the case of TOPA) or nonprofits (in the case of COPA) the first chance to buy their buildings when the owner decides to sell, and the opportunity to match a third-party offer. Despite the newness of many policy proposals, TOPA has a 40-year history of being implemented in Washington, D.C., in ways that have contributed to affordability and community stability in one of the fastest-gentrifying cities in the country. Six other jurisdictions have TOPA or COPA policies in place for multifamily properties or manufactured homes, including San Francisco, which established COPA in 2019. This brief 1) describes how TOPA works in Washington, D.C., based on the experiences of LISC DC which has a prominent role in the TOPA process; 2) offers implementation lessons from DC about organizing, technical assistance, and financing needs; and 3) provides evidence about the impact of TOPA-like policies, based on preliminary LISC analyses of housing market dynamics in New York City. Findings suggest:

- TOPA and COPA are workable and impactful policy instruments which can be implemented even in hot-market locations: in DC, TOPA, combined with preservation funding, has preserved over 2,100 units of affordable housing just since 2018.
- To realize impact, TOPA and COPA policies must be paired with resources for tenant organizing and legal assistance; grants and affordable financing to help tenants acquire and rehabilitate their properties in ways that ensure their affordability and good maintenance; and long-term support for building management and sustainability.
- Preliminary research by LISC modeling the effect of TOPA or COPA-like subsidies suggest the potential benefits of the policies on tenant quality of life. In New York, maintenance violations appear to decrease three-fold in properties after being sold and then supported by affordable subsidy, compared to similar properties that were merely sold to another owner.¹

TOPA and COPA programs have substantial, and growing, track records

Though TOPA or COPA programs are being considered throughout the country, at least seven other jurisdictions have similar laws in place,² including San Francisco's Community

Not only DC but San Francisco and six additional jurisdictions have TOPA or COPA policies in place, with many more being considered around the country.

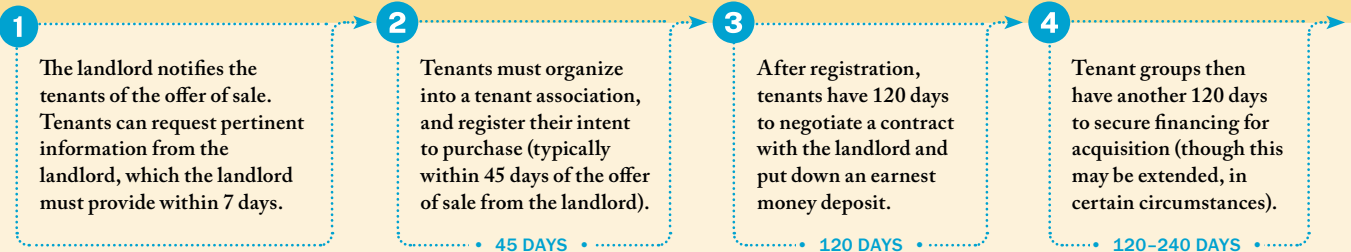
Opportunity to Purchase Act (COPA) passed in 2019; multi-family right of first refusal laws in Baltimore, Montgomery County, and Takoma Park, MD; and statewide right of first refusal laws for manufactured homes in New Hampshire and Minnesota. **In Washington, D.C., where TOPA has a 40-year history rooted in organizing for racial justice, community reinvestment, and self-determination, TOPA in combination with a new Affordable Housing Preservation Fund³ has preserved over 2,100 units of affordable housing just since 2018, in addition to thousands of homes preserved in prior decades.**

How TOPA works in Washington, D.C.

LISC DC's experience reinforces that TOPA is most impactful when paired with resources for tenant organizing and legal assistance, with grants and affordable financing to help tenants acquire and rehab their properties in ways that keep them affordable, and with long-term support for building management and sustainability.

Under DC's TOPA, multi-family building owners must notify tenants when they put their buildings up for sale or enter into a sales contract with a third-party buyer. Tenants can request relevant information, and then have 45 days to organize a tenant association and register their intent to purchase. After registration, tenants have 120 days to negotiate a contract with the landlord matching the terms of the third-party offer and put down an earnest money deposit, and then another 120 days to secure acquisition financing, which can be extended in specific circumstances. TOPA therefore strengthens tenant power at the time of sale, a potentially destabilizing moment when tenants typically have little control,⁴ and puts them in the driver's seat throughout the process, as they can decide whether to purchase the building to form a cooperative or condominium; assign their rights to a third party, such as a nonprofit developer; negotiate a buy out with another potential buyer, or not to exercise their rights.

TOPA TIMELINE FOR 5+ UNIT BUILDINGS



TOPA In Action: La Union Buena Vista Cooperative

La Union Buena Vista Cooperative,⁵ located in the rapidly gentrifying neighborhood of Columbia Heights, provides a powerful recent example of how tenant organizing, TOPA, acquisition financing, and technical assistance combine to help tenants remain in their homes and improve

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VICTORIA MIRANDA

their living conditions. For years, the 21 residents—mostly low-income, Central American immigrants, and some of whom had lived in their apartments for decades—endured bedbugs, cockroaches, broken appliances, mold, and holes in their walls. In response, tenants organized with their neighbors across different cultures and languages, and declared a rent strike in May 2020 to try to win needed repairs. But the landlord let conditions deteriorate to

a point where the DC Office of Regulatory and Consumer Affairs condemned the building⁶ in February 2021. Despite this disrepair, an outside buyer made a \$5 million offer on the building shortly after, triggering the TOPA process.

Already organized, tenants unanimously voted to form a limited-equity cooperative to buy their building together, resisting the third party’s buyout attempts of \$50,000 to each tenant to leave and give up their rights. With a \$6.6 million loan⁷ for acquisition and critical repairs from LISC DC, a crowdfunding campaign for a feasibility study, and assistance from tenant organizing collective Stomp Out Slumlords, a development consultant, and Legal Aid attorneys, La Union Buena Vista Tenants Association closed on their building in 2022, and will apply for a loan from the DC Housing Production Trust Fund to finance the gut rehabilitation their building needs. Going forward, La Union Buena Vista Cooperative will provide 34 homes that will remain affordable for at least 40 years. “We fought for this housing, for our community,” said La Union Buena Vista president Victoria Miranda. “And now that it will be owned and operated by residents, it will be for a long time.”



Implementation Lessons from Washington, D.C.

Organizing and technical assistance considerations

- **Ongoing organizing and technical assistance before, during, and after building acquisition are essential for meaningful TOPA implementation.** In a city of approximately 712,000, DC funds 10 community-based organizations, primarily with Community Development Block Grant dollars, to provide TOPA information, technical assistance, and tenant organizing. This work begins even before buildings go up for sale, as despite TOPA's long history, many tenants are unaware of their rights. Together, the 10 groups provide TOPA information and technical assistance to 7,000 tenants annually in properties ranging from one to hundreds of units, in addition to educating 3,000 tenants about other tenant protections and resources

DC's experience with TOPA shows how it is critical to support tenant organizing and technical assistance well before a building is put up for sale, through acquisition and as permanent financing is secured, and during ongoing building management.

in the District, and one study found that buildings that received this assistance were more than three times as likely to register their TOPA rights than those that did not.⁸ After tenants have formed a tenant association and registered their rights, they have substantial and often technical choices to make, requiring a multi-lingual team that includes legal and development assistance, as well as community-based technical assistance providers. Ongoing assistance is important, as tenants are often subject to significant outside pressure, including buyouts and offers from outside developers who attempt to bargain for their TOPA rights.^{9,10} This successful outreach and ongoing support represents a significant accomplishment that could be amplified with additional funding,

since the volume of TOPA notices still far exceeds current organizational outreach capacity given limited resources.

- **After the significant achievement of buying their building together, tenants need organizing support and technical assistance for securing permanent financing, to support asset management, and for ongoing leadership development.** Some DC cooperatives express that they do not know where to go with questions after the acquisition phase is over, despite the established network of housing organizations and cooperative experts in the District, particularly after residents involved in the original acquisition move or pass away, and new residents move in. Peer learning and collaboration among cooperatives have been an important source of information and support.¹¹ Supporting peer networks and collaboration among tenant associations and cooperatives as well as long-term technical assistance should be factored into budget proposals for TOPA, as they are critical for long-term stewardship of housing preserved through these policies.

Financing considerations

Public subsidy, well-managed loan funds, and financing for building repairs and upgrades are critical to preserving affordable homes for tenants.

- **DC's public investment in TOPA acquisition and permanent financing has been critical to the policy's successful preservation of thousands of homes.** Two major funds are in place in DC to support TOPA predevelopment, acquisition, and repair, including the Housing Production Trust Fund managed directly by the Department of Housing and Community Development (DHCD), and the Affordable Housing Preservation Fund managed by LISC DC, Capital Impact Partners, and the Low-Income Investment Fund. It has been extremely important that the Housing Production Trust Fund, initially funded with deed and recordation tax revenue, was later supplemented with a \$100 million annual allocation under the Bowser administration to provide acquisition and permanent financing. This fund works together with the Affordable Housing Preservation Fund, created in 2018 to provide rapid predevelopment, acquisition, and critical repair loans. The District typically allocates \$9–10 million annually to the preservation fund, divided evenly between each fund manager. With this public investment, fund managers leverage additional private capital for a total investment of nearly \$125 million over the last five years. The public dollars also function as credit enhancement that allow fund managers to make acquisition loans of up to 125% of the property's value at lower interest rates, which means that tenant cooperatives can access larger loans on better terms. "Without these public dollars, we likely wouldn't be able to do these deals," said LISC DC. The District requires that TOPA buildings receiving public subsidy must be affordable to residents earning 80% Area Median Income or below and stay affordable for up to 40 years, in contrast to recent COPA and TOPA proposals in other jurisdictions, which require permanent affordability.
- **Lenders are tightly linked to newly-formed tenant cooperatives both directly and through the support of nonprofit partners.** Recognizing that TOPA acquisition and financing is complicated for newly-formed tenant cooperatives to navigate, LISC DC sees a core part of its lending role as working directly with residents to ensure a clear understanding of the loan terms and how repayment fits into the broader process of managing a building together, to ensure long-term success. Because newly incorporated tenant cooperatives do not have a financial history or assets except their building, LISC DC instead focuses on the building's cash flow, the commitment of the cooperative members to the project, the strength of their relationships and organization, and their development team members. Accordingly, new TOPA proposals should allow for timeline extensions and flexibility in working with tenants, and ensure adequate funding to hire loan officers to do the time-intensive, relational lending needed to underwrite TOPA loans, whether housed within government agencies or CDFIs.
- **Following rapid acquisition financing, TOPA projects need permanent financing to refinance the initial acquisition loan and make other building repairs and upgrades.** "This is one big need we see in most if not all TOPA properties we lend to, because they've been severely underinvested in over the years," said LISC DC. In DC, various



local and federal programs are used for repairs and upgrades, though more is needed to meet needs across TOPA projects, especially as some funding is awarded annually through a competitive process that may disadvantage tenant organizations without development experience, leading to delayed repairs, disheartened tenants, and more strains on project finances.¹² To address these issues, DC housing advocates have called for increased acquisition and permanent financing, as well as a streamlined, rolling application process that would make it easier for tenant cooperatives to apply. Guaranteeing permanent financing for projects that qualify for acquisition funds would also help simplify the process.

LISC and UNHP research on the drivers of eviction, and the protective power of affordable housing investments

Since pandemic-era restrictions were lifted, locations across the country have seen rising eviction rates,¹³ with research supporting tenant claims¹⁴ that corporate landlords¹⁵ and private equity¹⁶ have contributed to the upsurge. By promoting tenant and community ownership, TOPA and COPA undercuts the strategies that speculators and corporate landlords use to realize profit by harming

tenants: 1) flipping properties at prices that incentivize the new owner to drive out existing residents, and 2) refinancing mortgages for ever-higher amounts, while using these proceeds to buy new buildings rather than to maintain existing properties. Recent research¹⁷ by LISC and UNHP quantified the harm caused by these speculative strategies, which were most likely to occur in BIPOC neighborhoods. Landlords who sold their buildings for the highest price increases or who refinanced to take out the highest amounts of additional debt had up to 2.7x more housing code violations, and evicted their tenants at 1.5x the rates of owners of similar properties in comparable neighborhoods.

In contrast, buildings that received some form of affordable housing subsidy were better maintained, holding as many as 75% fewer housing violations in some years. [Preliminary, additional analyses by LISC modeling the effect of TOPA or COPA-like subsidies suggest the potential benefits of the policies on tenant quality of life: in New York, maintenance violations appear to decrease three-fold in properties after being sold and then supported by affordable subsidy, compared to similar properties that were merely sold to another owner.](#) This increase in housing quality is likely a combination of the direct investment in the building and changed incentives for the owner to prioritize tenant needs. Because COPA and TOPA policies are paired with subsidies that can help lower-income tenants and their representatives buy and rehabilitate properties, this research suggests that these initiatives – when adequately complemented with acquisition, rehabilitation, and technical assistance funds – can substantially improve tenant quality of life, while reducing evictions that particularly harm BIPOC communities.

Early COPA Lessons from San Francisco

In contrast to DC, where TOPA originally passed to help stabilize tenants against decline and disinvestment, San Francisco passed COPA in 2019 to promote transparency in multifamily sales and give nonprofit housing organizations a reasonable chance to acquire buildings and preserve them as permanently affordable in a supercharged real estate market.¹⁸ COPA gives qualified nonprofit buyers a right of first offer and a right of first refusal for multifamily buildings with 3+ units and vacant lots zoned for 3+ units. The right of first offer means that owners must notify qualified nonprofits before they put their buildings on the open market, which triggers a 5-day period for them to express their interest in buying the building, and 25 days to make an offer. If their offer is rejected by the seller, qualified nonprofits can then match a third party offer through their right of first refusal. **To help equip groups exercise their COPA rights, the City of San Francisco invested \$3 million in nonprofit capacity building over three years, with a focus on organizations based in communities of color with high displacement pressures.** While there is not a specific COPA acquisition fund, the City committed \$37 million for acquisitions in 2019-2020, and the public-private San Francisco Housing Accelerator Fund launched in 2017, is another source of acquisition funding for COPA projects. Overall, the Housing Accelerator Fund has produced over 1,800 affordable homes, including 431 through preservation, and COPA has preserved over 230 homes.^{19 20} Advocates anticipate this pace will increase as real estate sales recover in the wake of the pandemic, and particularly if new local and state funds are committed.

San Francisco requires all COPA projects to be permanently affordable rentals, but buildings may later convert to limited-equity cooperatives, as long as they remain affordable in perpetuity.²¹ This option allows nonprofits to move quickly to buy buildings to secure them from speculators, and then work with tenants to create cooperative governance structures and secure permanent financing for a limited-equity cooperative conversion. Though the tight offer timeline poses a challenge, some nonprofits have purchased buildings after the COPA offer period expires by partnering with well-organized tenant associations on a shared acquisition campaign. The San Francisco and Oakland Community Land Trusts have taken this approach, supported with acquisition financing from LISC Bay Area.²²

Early successes in San Francisco speak to the potential impacts of COPA and TOPA, and like DC also speak to the need for investments in capacity-building, organizing, and acquisition and permanent financing. San Francisco's permanent affordability requirement ensures that these upfront investments will pay dividends in perpetuity.

Endnotes

- 1 This preliminary policy brief distills findings from an upcoming, longer implementation study examining TOPA and COPA and quantitatively modeling its potential impact using data on New York City rental properties. For questions, please contact the authors.
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