

New York's Community Opportunity to Purchase Act vetoed

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In one of his last acts as Mayor, Eric Adams vetoed the version of the Community Opportunity to Purchase Act, Intro 902-B (COPA) passed by the New York City Council on December 18, 2025. The original Bill had been amended multiple times over the prior few weeks in order for its sponsors to obtain veto proof support from the members of the City Council for this very controversial bill.

COPA would have amended (and still might amend the New York City Administrative Code) by adding Chapter 9-a which gave certain nonprofit entities and their for-profit partners, a Right of First Offer to purchase any multifamily rental building containing 4 or more dwelling units in New York City that met certain criteria for financial/operational distress and buildings that have expiring restrictions on affordability.

It seems to be premised on the belief that nonprofits can do a better job operating real estate than private landlords.

The newly installed City Council has the ability for thirty days to override Mayor Adams' veto. On September 30, 2025, Holland & Knight issued a Client Alert on an earlier version entitled "First Opportunity to Purchase: The Cloudy Future of Multifamily Housing Sales in New York," which analyzed the original Bill and discussed the negative impact on sales and therefore development of housing in New York City.

None of the changes in the proposed afterward made COPA less of a potential disaster for landlords and housing in New York City.

Although enabling nonprofits to purchase multifamily buildings might seem like a laudatory idea, not only will it not help the tenants, but it will do nothing to create more housing in New York City, regardless of whether it is affordable or market based, which is a much larger problem than whatever problem COPA was enacted to solve.

In the process COPA would have created a labyrinth for landlords to be able to sell their buildings, no doubt resulting in a great deal of litigation against landlords and possibly the nonprofits and New York City, would not result in any investor wanting to become involved in the New York City housing market, and would destroy the market value of housing and, most significantly, the ability of landlords to finance the affected buildings.

The end result of this proposal is that it will just hurt the tenants who do not have adequate housing and not provide housing for tenants who do not have adequate housing. It seems to be premised on the belief that nonprofits can do a better job operating real estate than private landlords and does not seem to be based on any research.

Let's start with a fundamental truth. Most of the housing in New York City was built more than five decades ago and needs a significant amount of capital investment to meet 21st century requirements and all the expensive local laws enacted over the last few decades.

Interestingly, there is no discussion as to the source of that capital to purchase or rebuild the housing by the nonprofits. However, even if the capital is available, there is someone already living in the housing and they are not going to vacate their apartment to allow someone else to move into their apartment. Since COPA does not add to the available housing, in what way does COPA make sense?

Additionally, if the nonprofit fixes up the building, who is benefiting because the tenant has not changed. Did anyone actually study what happened in Washington, D.C., and San Francisco when those cities enacted forms of COPA, because if they did, there would be no New York version of COPA.

Many nonprofits have written glowing PR pieces about what happened in Washington, D.C. and San Francisco as a result of COPA and TOPA, but as I will point out, it made the housing situation worse.

The odd part about every proposal to solve the housing crisis, including COPA, Good Cause Eviction and the HSTPA, helps tenants paying below market rent whether they need it or not and hurts anyone without housing.

COPA requires that an owner of a residential building must provide notice to the Department of Housing Preservation and Development (“HPD”) and all nonprofit entities certified by HPD, of the owner’s intent to sell qualified housing before the owner takes any action to sell it.

One has to assume this Bill will be triggered by the landlord’s plan to advertise the sale of a building or hiring a broker to list the building, but could also mean discussing a possible sale with the owner’s lawyer or accountant.

In his veto message, Mayor Adams stated: “This version of COPA goes too far.”

The owner must register with HPD and provide HPD and approved nonprofits with a notice of intent to sell, that must include the following information: 1) The name and address of each owner of the property; 2) all addresses and names of the property; 3) the total number and type of dwelling units subject to a sale; 4) the date by which a notice of interest must be submitted; 5) information relating to the property’s income and expenses; and 6) such other information as HPD may require, which leaves the door open to seeking all information regardless of its relevance.

If no qualified entity responds, the owner can proceed with a sale on the open market. If a qualified entity submits a statement of interest, the owner is prohibited from marketing or selling the property for 25 days. There is nothing that prevents the tenants from picketing the building, starting rent strikes or taking other actions to make the building unsalable at any price once they learn the building might be sold.

Unfortunately, the Bill does not indicate by what date the closing must occur, which will harm an owner needing to meet a deadline (e.g., a tax deadline, a mortgage maturity, or a need to liquidate the investment).

Moreover, the HPD commissioner could extend any time limit upon application and for good cause shown, provided that the party applying for the extension was not at fault in causing the need for the extension.

If a qualified nonprofit does not submit an offer in writing to the owner and HPD within the time period following the notice of sale by the owner, then the right of first opportunity to purchase shall be deemed waived and the owner can proceed with the sale.

An owner may withdraw a notice of intent to sell, but if the owner later decides to offer the property for sale, the owner must go through the notice of intent to sell process again.

If a qualified buyer submits a statement of interest, the parties can enter into a Confidentiality Agreement and the owner must provide due diligence material including the current rent

roll, the income and expense reports for the preceding twelve-month period including capital improvements and such other information required by HPD.

In the event the qualified entity fails to close, the owner can sell the property on the open market. If an owner gets an offer that it intends to accept, then the qualified entity would be advised and have up to 15 days to match the offer. If the owner receives an offer that it intends to accept from a non-qualified buyer within one year after rejecting an offer from a qualifying buyer, the owner must notify HPD and the qualified entity.

H&K’s first Article on COPA contained a list of all the flaws with Intro 902, however, the biggest flaw is that it would reduce the reason for anyone to own or develop multifamily housing in New York City, would significantly reduce the \$4 billion in Real Property Taxes and mortgage recording taxes that the city and state receive from property sales, make multifamily buildings unfinanceable, and would accomplish nothing in terms of creating housing or helping tenants.

DC TOPA struggled to reduce displacement or preserve affordability, even when mission-driven housing providers (i.e., nonprofits) were interested in a particular property.

In his veto message, Mayor Adams stated:

”This version of COPA goes too far. Int. No. 902-B expands the exclusive right of first offer and right to match third party offers to certain nonprofits and joint ventures even for buildings with minor violations of the City’s Housing and Maintenance Code. This would unjustifiably restrict the pool of potential buyers of residential real estate in New York City for thousands of additional buildings, including, for example, those with chipped paint, minor leaks, or a pest problem.

Moreover, this version of COPA would present significant operational and administrative challenges for City agencies involved in administering this law, leading to significant costs to the City in assisting nonprofit organizations with renovating and possibly even procuring certain properties. We should be finding ways to improve the housing market, not creating unnecessary regulations burdening the purchase and sale of housing, and thereby decreasing the availability of safe and affordable apartments.”

Mayor Adams point was well taken because it highlights the most obvious problem — it did nothing to improve the housing market or result in more housing, which should have been the City Council’s highest priority.

As indicated above, this kind of legislation has previously been attempted in Washington, DC and San Francisco without positive results.”

What happened in Washington, D.C.

In 1980, the Council of the District of Columbia (“DC Council”) enacted the Tenant Opportunity to Purchase Act (“DC TOPA”) which provided tenants a right of first refusal to buy their rental buildings when the building was listed for sale.

Over the years, DC TOPA has been amended multiple times because it reduced the amount of affordable housing and led to tenants losing their homes. The most recent attempt to correct the damage done by DC TOPA is the Rebalancing Expectations for Neighbors Tenants and Landlords (“RENTAL”) Act of 2025, enacted by the DC Council.

There are also the unintended consequences of COPA, which could put severe financial stress on the nonprofit owners of the properties.

A review of DC TOPA found that it helped preserve affordability and facilitated repairs or improvements in older, smaller buildings, but it introduced delays, increased costs, and created uncertainty in newer and larger buildings — factors that discouraged investor and lender interest in new developments and in making major renovations.

Additionally, DC TOPA struggled to reduce displacement or preserve affordability, even when mission-driven housing providers (i.e., nonprofits) were interested in a particular property. These challenges stemmed from a lack of dedicated funding to support such projects, growing tenant arrearages (especially for affordable housing providers), and the inability of affordable housing providers to fund repairs, renovations, and unfunded government mandates.

DC TOPA also discouraged financing for new developments and major rehabilitation projects due to a) the inability to quickly react to changing market conditions, prolonged negotiations, and potential lawsuits all of which disrupted transactions and tied up capital and caused financial losses; b) large projects having difficulty in attracting new investments or recapitalizing projects due to DC TOPA’s broad definition of a sale.

Another part of the problem was that even partial ownership changes could trigger DC TOPA proceedings, delaying deals and adding costs. Moreover, refinancing obstacles by the Notice of Transfer requirement, making DC TOPA less attractive to investors compared to markets with clearer capitalization and exit.

Furthermore, many properties that were purchased by tenant associations, which is not part of New York COPA, struggled

financially due to underinvestment and inadequate capital reserves, raising concerns about the long-term viability of the transactions, and the cost of maintenance, repairs and renovations.

This matters even more in today’s economic climate — higher interest rates and post-pandemic demographic shifts have weakened investor confidence in the housing markets. Unfortunately, the same issues could arise for nonprofits becoming landlords. One common argument against DC TOPA was that it reduced both sales volume and property values, which is likely also to occur in New York City.

The D.C. metropolitan area is also much smaller than New York City and contains only about 6,000 multifamily units rather than more than two million units in New York City. Moreover, sales volume in D.C. declined sharply after 2015 due to more attractive investment opportunities in other markets, where per-unit values offered better returns and DC TOPA complicated and delayed property transactions.

What happened in San Francisco?

The proposed New York COPA appears to be based on the San Francisco Community Opportunity to Purchase Act (SF COPA), which was enacted in 2019. San Francisco seems to suffer from many similar problems as New York City although New York City is significantly larger, but studying the impact on the San Francisco housing market could provide a hint of what could happen in New York City.

In a January 2023 analysis of Governmental and Non-Governmental Constraints on Housing prepared by the San Francisco Planning Department the following was reported:

“The non-governmental constraints that impact market-rate development — high land values, high construction costs, low site availability, and community resistance — also have significant effects on affordable housing, or housing produced with public subsidy by nonprofit developers.

Affordable housing developers are also subject to unique governmental constraints including funding subject to specific reporting and requirements, staffing shortages and prevailing wage expectations, and multi-jurisdictional complexities only required of projects receiving public funding.

While inclusionary housing remains a key program to increase the supply of permanently affordable housing, it remains the highest fee or public benefit demanded of market-rate projects and has a big impact when the system is tuned in ways that stress the process.

While San Francisco designed the inclusionary rate system to fluctuate to adapt to market changes, it is also an unpredictable process that is often out of cycle, making market rate projects unfeasible. Developers also stressed that it causes a wider cost gap between market-rate and affordable units and makes it more difficult to provide middle-income housing.

While recent state legislation has provided unique ministerial pathways to approval and has provided density bonus options for eligible projects, many affordable housing projects still need to seek community acceptance given their missions.

Affordable housing also continues to come with stigma associated with poor quality housing of previous public housing projects or rejection of residents with different lifestyles, class, or culture, especially in affluent neighborhoods.”

Conclusion

There is no large jurisdiction that has successfully interfered with the sale of housing, so there is no certainty how it will impact the housing market in New York, although there is no basis to believe that it will spur housing development which is certainly not what happened in San Francisco or Washington, D.C.

The other reality is that housing is very expensive to maintain, repair, and restore so what will be the nonprofit’s source of the funds to do so? COPA may result in more dangerous and dilapidated housing similar to what happened with the NYCHA housing and even the Mitchell-Lama rentals where no reserves were created to deal with long term maintenance, repair, replacements, renovations and mandates such as Local Law 11, 127 and 97 just to name a few.

If the Mayor’s veto is overridden, the City Council will also be presenting a problem for itself because, in the future, the nonprofit owners will pressure the City Council to be exempt COPA housing from expensive new mandates.

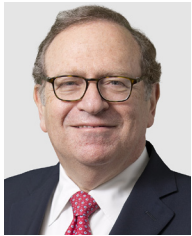
There are also the unintended consequences of COPA, which could put severe financial stress on the nonprofit owners of the properties. COPA was significantly revised on December 1st for enactment before the City Council retired on December 18, which is not nearly enough time to consider the impact it would have.

This is no way to develop housing. Someone has to explain how COPA makes sense. How do nonprofits fix a building’s decades-old problems and are they going to risk their endowments attempting to solve the problems of the lack of housing in New York City which resulted from badly considered public policy initiatives, wear and tear on rental housing, and lack of capital for repairs and improvements.

New York City and State have serious problems, a shrinking population and tax base, and limited resources. The only way that these issues should be addressed is if all the stakeholders meet and develop a coordinated plan.

The solution is not pushing a single agenda that placates a particular constituency, but recognize that a broader perspective is required. COPA is not a solution to any of the problems and its unintended consequences could be devastating.

About the author



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