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# IMPACTS OF OPPORTUNITY TO PURCHASE

Getting the conversation started

## Abstract

The need for affordable housing is great. More people are being priced out of areas they have lived in for years, sometimes decades as rent prices have been on the rise. There is a feeling that landlords and property owners have all the power and tenants feel overwhelmingly helpless.

Opportunity to Purchase (OTP) is seen as a way to level the playing field. The policy requires tenants of rental properties be given first priority when the property owner wants to sell. OTP policies have been implemented mainly for manufactured/mobile home parks (MHPs). However, other cities are looking at Washington DC's example of opening OTP to other types of housing. This project follows the NW Cooperative Development Center as they engage stakeholders and policy influences in starting the conversation to advocate for OTP policies on the State and local level for MHPs and other types of rental housing.

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## Executive Summery

Opportunity to Purchase (OTP) requires tenants of rental properties be the first to receive notice of sale of the property and have the first opportunity to buy it. Depending on the policy, the term Opportunity to Purchase can simply mean, a period of good faith negotiation between the property owner and tenants when the owner wishes to sell. Often with good faith negotiations, the owner has no obligation to sell to the tenants. Other policies have a Right of Frist Refusal condition which mandates that if the tenants are able to match a bid proposed to the owner by a third party, the tenants automatically win the bid. (State by State Information - Right of First Refusal, n.d.) Regardless of which rights are outlined in an OTP policy, the primary merit of having OTP polices in place is to give at least some power, control, and assistants to the tenants. With OTP, people are given time to organize and notify the property owner their intent to buy or not. If the tenants do express an interest, then they have a set period of time to form a tenant's association, come up with the money, and purchase the property. If the tenants do not wish to buy, the property owner is free to sell to other interested parties.

OTP laws have most frequently been enacted for manufactured/mobile home parks (MHPs) because of the unique situation where tenants often own their homes but rent the property their home sits on. As it stands today, the lion's share of OTP ordinances applies only to MHPs. Washington, D.C. has the most robust OTP policy in the country, named the Tenant Opportunity to Purchase Act (TOPA). TOPA is one of the only OTP laws applied to housing other than MHPs.

The cities of Berkeley, Oakland and Richmond California are currently exploring passing OTP ordinances based on DC's TOPA policy (Wallace, 2019). San Francisco has a policy they call the Community Opportunity to Purchase Act (COPA) in which qualified non-profits have



the right of first offer, and/or the right of first refusal to purchase certain properties up for sale in the city (sfmohcd.org). Seattle has passed an ordinance requiring property owners renting low income housing to give tenants a notice of sale 90 days prior to the building being listed and also includes an OTP option. The city of Tumwater has a Manufactured home park zone district code in which land can be zoned to be used only for MHPs, so even if a developer buys the property, it cannot be redeveloped for anything other than a MHP.

For this project, I have partnered with the Northwest Co-op Development Center (NWCDC), to get the conversation started in terms of bringing OTP laws to Washington State. During the 2020 Legislative session the NWCDC and their allies attempted an OTP bill (HB 2610) which would give OTP options for MHPs on a State level. Though the bill did gain some momentum, it ultimately did not get past the Senate committee. I arranged a virtual meeting to help inform the NWCDC about possible impacts of an OTP policy on a more local level and brainstorm ideas on how to move forward with both the State bill and lobbying for OTP policies on a local level.

Topics discussed during the focus group included but were not limited to:

- An Ideal OTP Policy vs What might realistically get passed
- Other things that can be placed in effect in leu of an OTP Policy
- First steps towards proposing and passing OTP policies
- The supports needed to be in place before or developed alongside OTP policies
- Can individual cities and counties even legally pass such policies? If so, how?

One theme that arose from the discussions is that OTP can help with preservation; preservation of affordable housing, preservation of community, as well as preservation of historic property. It was pointed out that it is far cheaper and practical to preserve existing affordable housing than it is to build something new. Another theme that arose was that fact that a network of support would be needed if/when any kind of OTP policy is implemented.



Organizations who wish to help tenants and landlords navigate the processes would need to be knowledgeable and have the administrative capacity to be effective. There is also the inescapable question of funding. Who will fund the support network? Where would tenants come up with the money to buy property?

All and all, this project and the meeting is a way to get the conversation started, and by no means presents any definitive conclusions, only ideas on where one could start and things to consider during the planning stages. However, the sentiment of the participants seems to be that the option of OTP is a conversation worth starting, especially now, when there is a building interest in OTP and other tenant friendly policies as other cities look at Washington DC's example and try to adapt it to their own city's needs. Another sentiment that came from the conversation is that there needs to be a cultural paradigm shift around housing and homeownership in this country.



Grace Lee

## The Problem

The need for affordable housing is great. The homeless crisis has become more visible than ever and the people who suffer can no longer be swept away, out of sight. More people are



being priced out of areas they have lived in for years, sometimes decades. Rent prices have been on the rise and the goal post of homeownership keeps moving. Property owners argue they are only trying to make a living, while their tenants argue that they are only trying to live. In this climate of housing instability more and more people are calling for solutions.

OTP gives tenants an opportunity they do not usually get. More often than not, a property goes up for sale and the people living there have short notice of the sale, sometimes just the day before the sale is posted. Once the sale is posted, there is little, if anything the tenants can do about it. If the new owner wants to redevelop the property, then the tenants have little choice but to try and find a new place to live.

In the case of manufactured/mobile home parks (MHPs) relocation is especially difficult when a new owner has elected to either raise land leases, in which case may eventually price people off of the land they lease or decides to redevelop the land. In spite of their name, mobile homes are not all that mobile after they have been placed. Often, trying to move a “mobile home” after it has settled would cause the structure to collapse. Moreover, even if the homeowner were to have the means to move their home, the question then comes to where they can go. As more and more parks close to redevelopment, no new parks are created to replace them (Malpica, 2018) For this reason, having OTP policies in place can be extremely beneficial in preserving these parks and in turn preserving affordable housing and the community of the property. According to data collected by NWCDC, the Department of Commerce reports 1232 MHPs, with 64,758 available sites and 58,960 occupied sites State wide. This is an undercount as some parks don't register with the Department of Revenue. The Association of Manufactured Home Owners (AMHO) estimates closer to 1500 parks. Every park that is not preserved is at risk of re-development, further diminishing affordable housing stock.



It's not just MHPs in danger. Washington State has been under-producing housing stock by 225,600 units for 15 years. A report released in January (2020) by Up For Growth and ECONorthwest found that in 23 states, about 7.3 million units were under-produced between 2000 and 2015. Between 2000 and 2017, the national average for new housing units created per new household was 1.06. In Washington, it was 0.99 (Kunkler 2020).

Rent in Washington state has been increasing faster than incomes and at least 30 % of all households in every county are paying more than 30 % of their income on housing costs (Kunkler 2020). The US National Housing Act of 1937 states that for housing to be affordable, rent (or mortgage, utilities and maintenance for homeowners) should not exceed 30% of household income (Wharton Real Estate Center, 1992). To be paying more than 30% of household income puts one in the category of "cost burdened". An estimated 46% of Washington households renting are cost burdened (US Census). Moreover, half of this population is considered severely cost burdened, that is, paying over 50% of their income towards rent. The average rent for a one-bedroom apartment in Thurston County has increased more than 25% since 2014 (Thomas et. al., 2019). Michael Wilkerson, an economist with ECONorthwest, said for the Seattle Weekly "Those who can least afford it are those who are paying the most in rent." (Kunkler 2020). Rental housing available for less than \$1,000 a month has been declining since 1990 and in Washington State, the loss of affordable rental property amounted to 76,865 housing units(US Census). Further, these units were either demolished or the rent was increased. (Thomas et. al., 2019) "We need more housing, we also need more affordable housing," said State Sen. Patty Kuderer (D-Bellevue) for the Seattle Weekly "And as one constituent said to me, there's affordable housing and there's housing I can afford." (Kunkler 2020).



As such, greater efforts to safeguard all types affordable housing is advised. There are groups who would label TOPA policies as extreme. Indeed, a large group protesting TOPA policy efforts in Berkley, CA call TOPA “Taking Our Property Away” and a few others call TOPA out right Communist. Supporters say the policy “levels the playing field,” and that it’s important to preserve existing units, given the great expense of building affordable housing (Orenstein, 2020). Overall there is a feeling of imbalance, as property owners have the lion’s share of power and control. The NWCDC is looking at exploring a wide spectrum of policies from zoning protections to the TOPA like ordinances to give some power and control to renters. This initial first conversation is only the beginning.

## **Background**

In an earlier research project two fellow grad students and myself explored a possible solution of Limited Equity Housing Co-ops (LEHC/LEC). This option was brought to our attention when we partnered with the Northwest Co-op Development Center (NWCDC). The co-op development center has experience implementing a co-op conversion process developed by Resident Own Communities, known widely as ROC USA. The process has been streamlined by the ROC organization, developing a national network of nonprofits and capital funds to facilitate manufactured/mobile home parks (MHP) conversation to limited-equity co-ops. When a park has been sold for development, the tenants have often had nowhere else to go. MHPs have been bought and redeveloped, but no new parks have been allowed to go up to replace them. By helping the residents buy their parks and convert them into co-ops, the housing and the community is preserved. (rocusa.org; Malpica, 2018)

Though ROC has a solid process and support for converting MHPs to LECs, those we worked with at the co-op development center had little experience for converting other types of



housing to co-ops. Moreover, when trying to help MHPs, they often ran into the hurdle of being out bid by large investor groups. For our research project we explored the history of LEHCs and their claim of being a means to secure long term affordable housing. We found that LEHC can be a solid method of preserving affordable housing and especially strong when aided with an OTP policy or partnered with a Community Land Trust (CLT). For the purpose of this project I am diving deeper into the OTP side and exploring the impacts of a TOPA like policy being applied in Washington State on a local level.

The cities of Berkeley, Oakland and Richmond California are currently exploring passing OTP ordinances based on DC's TOPA policy. Berkley's mayor and city council have been researching and exploring options since November 2017 and discussions have been hosted by Berkeley's city council as recently as March 2020. Washington DC's policy has been in effect since the 1980s, so looking at what cities are attempting in current circumstances brings to light situations relevant to todays times.



## The Conversation

On Monday, April 20, 2020 I hosted a virtual meeting in which various stakeholders were invited to discuss impacts of OTP on a city or county level. It was an open-ended discussion in



which all possibilities could be explored. Policy makers and influencers representing State and city government attended as well as those who run tenant organizations, those who lobby for tenant rights and other parties interested in finding options for dealing with the housing crisis. All who were in attendance have some stake or influence in managing the housing crisis. Groups missing from the conversation, were parties that might have been opposed to any kind of OTP policy, which was mentioned as an oversight during the meeting. As a result, those attending the meeting had to speculate what opposition groups might say.

*Thoughts and ideals which emerged during the meeting:*

**There is a need of more tenant protections:** Landlords and property owners have all the power. They can sell property on any whim with little thought to the tenants. Tenants feel helpless.

**To consider things like opportunity to purchase and limited equity co-ops, there needs to be a cultural paradigm shift:** Real estate is seen as a commodity. Buying a house or land is seen as an investment. Like a car or other inanimate object being bought and sold, little thought is put into the human element. In that light, putting a limit on profit or who one can sell to is anathema in American culture. However, when one is renting property to others, it actually is more of a service. When one rents to another, there is an ongoing relationship in the transaction. Things like OTP and LECs take rental property out of the regular consumer market and place it in a category of a providing the service of secure shelter. The tenants turned owners become stewards of property, reserving housing simply as a place to live, not a means to accumulate wealth.

**There needs to be supports in place:** When DC's policy was implemented, there was little thought to having any supportive administrative structure. Supports were hastily thrown



together after the law was passed and it did not have the funding or administrative capacity to function efficiently. When planning to apply a TOPA like policy in Washington State, serious planning of a support system needs to happen in parallel. Supports would include, but not be limited to financial, legal and education resources for potential assisting organizations to either facilitate the transition or advice a tenant organization to do so. A support network could/should be in place even before any official policy is passed.

**Sources of financing need to be nailed down:** There is always a question of who will pay for what. There needs to be money to fund any supporting organization as well as funding for a nonprofit or tenant organization to purchase property. Washington DC has a public fund to bring acquisition and rehabilitation through TOPA within reach for low income groups. The [city, county, State] might consider a program for acquisitions and rehabilitations by low-income tenants under a TOPA policy. Taxes on luxury properties was a suggested revenue source. Assisting organizations also need to find other types of financing, be it from lending institutions like credit unions, finding grants or private donations.

**Opportunity to Purchase is a means of preservation:** OTP policies were seen by the group as a way to preserve current housing and as a result also preserve community. OTP policy can also help preserve historic property. Preserving already existing affordable housing properties is much more cost effective than building something new.

**Other things might be able to be put in place before/ or in leu of OTP:** Protective zoning was an option brought up. Tumwater was able to pass a special MHP zoning ordinance, mandating that land zoned for MHPs cannot be used for other types of development. Similar zoning could be applied for designating land for affordable housing. There was also talk of weaving protective policies into the county's comprehensive plan in the future.



**Considerations for possible carrots for property owners:** There was talk on possible incentives for property owners, such as not having to pay the excise tax if selling to the tenants. Also having considerations if the owner wants to pass on the property to a family member. It was agreed that more research into owner incentives would be needed.

**Push for State and Local policies at the same time and for all types of housing:** The NWCDC is continuing to lobby for a State law for OTP for MHPs. At same time, there is no reason why there cannot be efforts to start advocating for policies locally. In todays climate, now is a great time to start having this conversation and start pushing for tenant friendly policies on all fronts. The fact that other cities are seriously considering taking action to apply TOPA like ordinances is promising.

**Starting with one type of housing is no small step:** Though the State bill being lobbied for only applies to MHPs, passing it will be no small feat. Passing a bill for MHP can be the precedent need to get a foothold for passing OTP for other types of housing.

**Questions:**

Can individual cities/counties even legally pass such policies in Washington State? If so, how?

Where will the money come from?

Would a local TOPA policy be better applied on the county or city level?

Can cities act on TOPA/OTP within RCWs?

What would make for a good test case?

**Concerns:** Property owners with superior financial means, education, and legal resources can fight/ get out of any kind of enforcement. This same group will also fight against any OTP policy tooth and nail.



## Steps forward

Having tenant protections like OTP policies may help stabilize and preserve affordable housing. Framing OTP as a way to protect and preserve affordable housing may help it gain support. More and more people are being impacted by housing becoming more and more expensive, so there has been a willingness to consider ideas that may have been rejected in the past. For OTP policies to gain more traction, there needs to be a shift in the way housing property is viewed and managed. Perhaps stating something along the lines of those who rent out property are providing a service and not just buying and selling inert goods, highlighting the human element in these transactions. Spreading information about Opportunity to Purchase, TOPA and Limited Equity Co-ops can also help. There are many in the housing sector who are unfamiliar with these concepts and don't understand how they work. Finding and educating more allies from other types housing organization can help. The biggest hurdle for this and other affordable housing projects is funding. More research into revenue sources will be needed.

The NWCDC is continuing this conversation, brainstorming ideas with stakeholders and policy influencers. To get involved, contact the Center:

Phone: 360-943-4241

Email: [info@nwcdc.coop](mailto:info@nwcdc.coop)



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