

LEGAL ALERT

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CHICAGO'S TENANT OPPORTUNITY TO PURCHASE ORDINANCE TAKES EFFECT ON NORTHWEST SIDE

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The city of Chicago's recently established Tenant Opportunity to Purchase ("TOP") program for rental buildings on the city's northwest side is now being enforced as of March 1, 2025, by the Department of Housing. The program is part of the Northwest Side Housing Preservation Ordinance and gives tenants the right of first refusal to purchase their building when the landlord plans to sell it. It applies to residential rental properties within the 606 Predominance of the Block District, which includes the neighborhoods of Avondale, Hermosa, Humboldt Park, Logan Square and West Town.

PROGRAM GIVES TENANTS THE RIGHT OF FIRST REFUSAL TO PURCHASE

The TOP program is a pilot program scheduled to sunset at the end of 2029 with the stated goal of curbing gentrification, preventing displacement and preserving affordable housing. The ordinance requires landlords to notify tenants of the landlord's intent to sell the property at least 60 days prior to offering the property for sale. Once notice has been provided, tenants then have a certain period of time in which to exercise their right of first refusal to purchase the property. These time frames are dependent on the number of units in the building: 90 days for properties consisting of 5 or more units; 30 days for properties consisting of 3 or 4 units; and 15 days for properties with 1 to 2 units.

In order to exercise the right of first refusal, tenants must provide a pre-approval letter from a lender for buildings with 4 or fewer units or a letter of intent from a lender or community organization for buildings with 5 or more units. Once the right of first refusal is exercised the landlord must treat the tenants like any third-party purchaser and provide any information reasonably requested by the tenants for due diligence purposes. The ordinance also sets forth time periods for closing on the sale from the date the tenants provide notice of their intent to purchase (120 days for buildings with 5 or more units and 60 days for buildings with 4 or fewer units), unless the parties agree to a different time period in writing.

Other key aspects of the ordinance include that a tenant association may assign its right of first refusal and other rights under the ordinance to a third party without restriction. The tenants' right of first refusal is renewed in situations where the tenants fail to exercise the right or terminate the contract to purchase or default on the purchase agreement, and the subsequent sale of the property to a third-party purchaser fails to close and there is a "material change," meaning a new buyer and a drop in price of 10% or more. Any property purchased by exercising the right of first refusal under the ordinance is required to be maintained as rent-restricted affordable housing for at least 30 years.

TENANT OPPORTUNITY TO PURCHASE GENERALLY

Washington, D.C. was the first city to enact a law giving tenants an opportunity to purchase back in 1980. Similar laws creating a right of first refusal for tenants have been gaining momentum more recently across the country as governments look for ways to address housing affordability. Approximately 11 cities and the state of Maryland have now enacted such laws. Chicago enacted a similar ordinance in 2020, giving tenant associations a right of first refusal to purchase certain residential property for sale within the city's Woodlawn Community Area.

PRACTICAL IMPLICATIONS

Owners should be aware that the tenants' exercise of the right of first refusal automatically terminates any purchase agreement with a third party by law. Additionally, owners who fail to comply with the ordinance are subject to penalties between \$200 and \$1,000 per day while in violation of the ordinance. The ordinance confers a private right of action, allowing tenants to sue landlords for injunctive relief to enforce the ordinance, and be awarded treble monetary damages, court costs and attorney's fees. (Chicago Municipal Code §§ 5-10-010 to 5-10-170)

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