

FAQs

(frequently asked questions)

Tenant Evictions in San Francisco

April 2011 Edition,
by R. Boyd McSparran
& Jeanne Grove

Breaking News

On February 23, 2011, The California Court of Appeal recently struck down the major provisions of Proposition M, commonly known as the “Landlord Harassment” provision of the Rent Ordinance, which was passed by voters in November 2008. Proposition M prohibits landlords from harassing tenants or attempting to coerce a tenant into vacating their rental unit. The penalties included a rent reduction issued by the Rent Board, an attorney’s fees award, penalties and a possible misdemeanor. The Court struck down the Rent Board’s power to award rent reductions and attorney’s fees. Still in effect, however, are the provisions prohibiting landlords from attempting to coerce the tenant to vacate through threats, intimidation or fraud. Also, landlords and their agents may still be penalized for violations in the form of monetary fines, punitive damages and misdemeanors, and may still be exposed to attorney’s fees awards in state court.

Effective March 14, 2010, owner move-in evictions and relative owner move-in evictions of a tenant (who has been residing in the unit for 12 months or more) with a minor child (under age 18) may only take place during the summer school break, currently between May 30, 2011 and Aug. 12, 2011.

Beginning July 1, 2011, the Health and Safety Code will require owners of single-family dwellings with a fireplace, attached garage, or fossil fuel heater or appliance, to install and maintain carbon monoxide detectors. (This rule will apply to *all* residential dwellings beginning January 1, 2013). A landlord may enter the tenant’s unit for the purpose of installing, repairing, testing and maintaining carbon monoxide devices, subject to the statutory notice requirements for accessing tenants’ units.

Is My San Francisco Residential Rental Property Subject to Rent Control?

A property is subject to the San Francisco Rent Stabilization and Arbitration Ordinance if its first Certificate of Occupancy was issued prior to June 13, 1979. Also, as of April 25, 2010, rental properties that are in foreclosure are subject to limited eviction control regardless of the first Certificate of Occupancy date (see below).

What is the Effect of Rent Control?

There are two main features of Rent Control in San Francisco: rent increase limitations and eviction restrictions.

Are All Rent-Controlled Properties Subject to Both Rent Increase Limitations and Eviction Restrictions?

No. Many single family homes and condominiums are not subject to *rent increase* limitations. All rent-controlled properties, however, are subject to *eviction* restrictions. For *all* residential rental units, landlords may not seek to impose a rent increase more than once every twelve months, and any annual rent increase of 10% or greater requires a *sixty*-day notice.

What are the Rent Increase Limitations?

The San Francisco Rent Ordinance limits the amount of annual rent increases. Landlords can only raise a tenant's rent by an amount set each year by the Rent Board. The current allowable maximum annual rent increase (March 1, 2011 through February 29, 2012) is 0.5%. Landlords can also petition for rent increases for capital improvements, or increased operating and maintenance costs, but these increases are severely limited, and must be approved by the Rent Board.

What are the Eviction Restrictions?

The Rent Ordinance provides that a landlord may not endeavor to recover possession of a rental unit absent one of fifteen (15) "just causes" for eviction. On August 8, 2006, the Rent Ordinance was amended to require landlords to show "just cause" in order to recover possession of garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks, patios, or gardens on the same lot, supplied in connection with the use or occupancy of a dwelling unit.

Some of the fifteen "just causes" are tenant-motivated: nonpayment or habitual late payment of rent, breach of lease, nuisance, unlawful purpose, refusal to renew lease, failure to provide access, and holdover of an unapproved subtenant. The other "just causes", which are the principal focus of this article, are landlord-motivated: owner move-in, owner's relative move-in, sale of a newly-converted condominium, demolition of a rental unit, permanent removal of a rental unit from housing use, capital improvements, substantial rehabilitation, lead paint remediation, and removal of the entire property from residential rental use under the state Ellis Act.

Do Foreclosure Properties Have Different Rules for Rent and Eviction Control?

The rights of tenants under the Rent Ordinance remain intact, regardless of a foreclosure. A foreclosure is *not* a "just cause" for eviction under the Rent Ordinance. A foreclosure also does not affect the tenant's rental rate, and the tenant is still entitled to all the housing services associated with the tenancy regardless of the foreclosure. If utilities or housing services are interrupted or terminated at any time during the tenancy, the tenant may file a petition for substantial decrease in housing services or a claim of attempted wrongful eviction for termination of a housing service without just cause. Moreover, as of April 25, 2010, a rental unit that is not subject to eviction control *becomes* subject to eviction control if a tenant is residing in the unit at the time of foreclosure. As a result, the person or entity who takes title through foreclosure may not evict a tenant except for "just cause" as provided under the San Francisco Rent Ordinance. The new landlord must also serve a "post-foreclosure" notice on the tenant within 15 days of the foreclosure.

OWNER MOVE-IN EVICTIONS (OMI)

May I Evict My Tenant so I Can Reside in My Property?

In most situations, an owner may recover possession of a rental unit to use or occupy the unit as the owner's principal place of residence for at least three years. A tenant who has resided in the rental unit for twelve months or more is entitled to a 60-day eviction notice. A tenant who has resided in the rental unit for less than twelve months is entitled to a 30-day eviction notice. There are several requirements and restrictions on performing an owner move-in (OMI) eviction, including:

Requisite Ownership. Pursuant to the Rent Ordinance and the San Francisco Superior Court Appellate Division, the evicting owner must own at least a 25% interest in the property.

Present Intent to Establish Principal Place of Residence. The evicting owner must have the present intent of establishing the unit as the owner's principal place of residence within three months of gaining possession of the property, and thereafter occupying the unit as the owner's principal place of residence for at least the next three consecutive years. This requirement assures that tenants are displaced only for bona fide owner move-in reasons, and discourages landlords from evicting low-rent tenants and re-renting to market-rent tenants. If the evicting owner fails either to move in to the unit within three months, or to thereafter occupy the unit as the owner's principal residence for at least three consecutive years, the law presumes that the tenant was evicted in bad faith, and the owner may be held liable for wrongful eviction, at a substantial cost.

Restriction to One Owner Move-In Eviction Per Building. An OMI eviction may be used to gain possession of *only one unit per building*. An OMI eviction creates an "owner's unit," and any future OMI in the building may be used only to gain possession of that same "owner's unit." This restriction affects *only* those OMI evictions carried out after December 18, 1998.

Ownership of a Comparable Unit. If the landlord owns a comparable unit that is vacant and available, the landlord may not attempt an owner move-in eviction.

Ownership of a Non-Comparable Unit. If the landlord owns a non-comparable unit that is available, the landlord may attempt the owner move-in eviction, but must offer the displaced tenant the opportunity to relocate to the non-comparable unit, albeit at market rent.

Tenants with Children May Not Be Evicted During the School Year. Owner move-in evictions of a tenant (who has been residing in the unit for 12 months or more) with a minor child (under age 18) are prohibited during the school year (unless there is only one unit owned by the landlord in the building or the owner will move in with his or her own minor child). "School year" means the Fall Semester through the Spring Semester, as posted on the San Francisco Unified School District website for each year. Accordingly, for 2011, an OMI eviction notice to a tenant with minor child must be served such that the notice expires on a date *after May 30, 2011 and before August 12, 2011*.

Relocation Assistance. As of March 2011, the evicting owner must pay \$5,101 in relocation assistance to each authorized occupant ("Eligible Tenant"), regardless of age, who has resided in the rental unit for twelve months or more, up to a maximum of \$15,304 per unit. The evicting owner must also pay an additional \$3,401 to each household with an Eligible Tenant who has at least one child under the age of 18 years living in the unit, and to each Eligible Tenant who is over 60 years of age or disabled. The required relocation assistance is inflation-adjusted annually, every March.

Protected Tenants. A tenant is protected from an owner move-in eviction if he or she falls into one of three protected classes: tenants who are 60 years of age and have resided in the rental unit for 10 years or more; tenants who are disabled and have resided in the rental unit for 10 years or more; and tenants who are catastrophically ill and have resided in the rental unit for 5 years or more. This protection does *not* apply to tenants in a unit which is the only unit owned by the landlord in the building.

RELATIVE OWNER MOVE-IN EVICTIONS (ROMI)

May I Evict a Tenant so My Relative Can Reside in My Property?

An owner may recover possession of a rental unit to allow the owner's close relative to use or occupy the unit as that relative's principal place of residence *only* if the owner lives in the building or is simultaneously seeking to recover possession of a unit in the building through the owner move-in process ("ROMI"). All other OMI-related requirements and restrictions described above apply to ROMI evictions.

Does My Elderly Relative Get Special Treatment?

An exception to the protected tenant rule gives special treatment to an elderly relative: If all rental units in the building where the owner resides are occupied by protected tenants, then the owner may evict one protected tenant to provide a home to the owner's elderly relative.

SALE OF CONDOMINIUM EVICTIONS

May I Evict a Tenant from My Condominium?

An owner who completes a subdivision of his or her property into condominium units may evict a tenant in order to have the unit vacant for sale. Tenants have special rights under the San Francisco Subdivision Code, which govern when, and under what circumstances, this eviction may take place.

DEMOLITION/PERMANENT REMOVAL OF RENTAL UNIT EVICTIONS

What Can I Do if the City Orders Me to Remove an Unwarranted In-Law Unit?

If an owner has obtained permits to remove an unwarranted "in-law" unit, the owner may evict tenants from that unit in order to demolish or otherwise permanently remove the rental unit from housing use. As of March 2011, the owner must issue a 60-day eviction notice and pay \$5,101 in relocation assistance to each authorized occupant ("Eligible Tenant"), regardless of age, who has lived in the unit for 12 months or more, up to a maximum of \$15,304 per unit. Landlords must pay an additional \$3,401 to each Eligible Tenant who is disabled or is 60 years of age or older, plus \$3,401 to each household with an Eligible Tenant who has at least one child under the age of 18 years living in the unit. The required relocation assistance is inflation-adjusted annually in March.

Attorneys for landlords and tenants disagree as to whether the vacated space may then be converted to general living area, or whether it must be used for a non-housing purpose such as storage or parking. There is also a state law which requires an owner to give notice to a tenant before applying for building permits to demolish a rental unit; the applicability of this law to this type of eviction in San Francisco is undecided. Finally, tenants who are evicted from unwarranted units have been known to seek compensation for the rent that they had paid pursuant to a rental contract with an illegal subject matter. As more and more unwarranted "in-law" units are removed, the law surrounding this type of eviction will continue to develop.

CAPITAL IMPROVEMENT EVICTIONS

May I Ask My Tenant to Vacate so I Can Remodel the Unit?

If an owner has obtained permits to perform capital improvements to a rental unit, and the work will render the unit uninhabitable for a period of time, the owner may temporarily evict the tenant for a period of 90 days. If the work is likely to require longer than 90 days, the owner must first petition the Rent Board for permission to evict for a longer period of

time. If the work was originally estimated to take fewer than 90 days but runs overtime, the owner may petition the Rent Board for an extension. In addition, the owner must issue a 60-day notice and (as of March 2011) must pay \$5,101 in relocation assistance to each authorized occupant (“Eligible Tenant”), regardless of age, who has lived in the unit for 12 months or more, up to a maximum of \$15,304 per unit. Landlords must pay an additional \$3,401 to each Eligible Tenant who is disabled or is 60 years of age or older, plus \$3,401 to each household with an Eligible Tenant who has at least one child under the age of 18 years living in the unit. The required relocation assistance is inflation-adjusted annually in March. Rent is suspended while the tenant is away from the unit. When the tenant returns, the rent remains as it was, subject only to limited “pass-through” increases allowed by the Rent Board.

If an owner receives an order of abatement from the City to effect lead remediation or abatement work, then the owner may also temporarily recover possession of a unit solely to comply with the City’s order. The owner may temporarily evict the tenant for this purpose only for the minimum time required to do the work, and each tenant who is a member of the household shall be entitled to relocation assistance based upon the length of time the tenant will be displaced from the unit.

ELLIS ACT EVICTIONS

What Is the Ellis Act?

The Ellis Act is a state law which provides that a property owner may cease being a landlord. If an owner invokes the Ellis Act in a building containing 3 or fewer rental units, the owner must evict all tenants from all rental units on the entire property. If an owner invokes the Ellis Act in a building containing more than 3 rental units, the owner must evict all tenants from all rental units in that building only. As of March 2011, each tenant is entitled to \$5,105.20 in relocation assistance from the owner, not to exceed \$15,315.56 per unit. Certain classes of tenants may be entitled to additional relocation payments as noted below. These relocation payments are adjusted for inflation in March of each year. Tenants are given 120 days to vacate, except as noted below. The property is then subject to certain re-rental limitations.

What Are the Consequences of Invoking the Ellis Act?

The theory behind the Ellis Act is that the units are being taken off the rental market and will not be re-rented in the future. If any unit is re-rented, there are consequences. If any unit in the building is re-rented within *two* years, the owner will be liable for damages to the displaced tenant(s). If a unit is re-rented any time within the first *five* years, the owner must re-rent the unit at the displaced tenant’s original rent. The five-year restriction creates a price freeze on the rental value of the unit and is the most restrictive consequence. If a unit is re-rented within *ten* years, the owner must offer the unit first to the displaced tenant, however, it is only during the first five years of this period that the owner must re-rent the unit at the original rent; during the second five years, the displaced tenant gets the first right to re-occupy, but at market rent.

Can I Evict “Protected Tenants” with the Ellis Act?

Yes; while some tenants are entitled to special treatment, no tenants are protected from an Ellis Act eviction. Tenants 62 years of age or older, and tenants who are disabled, regardless of length of tenancy, are entitled to one year to vacate and additional relocation payments of \$3,403.45 each (as of March 2011), subject to an inflation adjustment every March.

UNLAWFUL DETAINER (UD) PROCEDURES

When Must the Tenant Move?

Most tenants are entitled to 60 days' notice to vacate; however, tenants being evicted using the Ellis Act are given 120 days' notice to vacate; elderly and disabled tenants being evicted using the Ellis Act are entitled to one year's notice to vacate.

What if the Tenant Does Not Vacate Within the Notice Period?

If a tenant does not vacate by the end of the notice period, and if the landlord and tenant have not come to an agreement as to when the tenant will move, the landlord must stop accepting rent and must file an eviction lawsuit called an Unlawful Detainer, or UD, action. The landlord is the plaintiff, the tenant is the defendant, and the lawsuit seeks to recover possession of the property and damages in the form of the rental value of the property during the lawsuit. Most UD lawsuits go to trial in one to three months after the notice period expires. Many landlords find it beneficial to settle with the tenant rather than incur court expenses and attorneys fees and the risks of a trial. Settlements often involve giving the tenant more time to vacate and/or helping the tenant financially, if the tenant is having trouble paying for moving costs or a higher, market rent.

SINGLE FAMILY HOMES

How Are Single-Family Homes Treated Differently for Rent Increase Limitations?

Single-family homes are not subject to rent increase limitations if the tenancy began after January 1, 1996. This is also true for condominium units that were built as condominiums. If a building was *converted* to condominiums, then this special treatment applies only to condominiums which have been sold to bona fide purchasers, and to the single condominium retained by the subdivider after *all* other condominiums were sold, occupied by the subdivider for one year, and then rented out by the subdivider.

How Are Single-Family Homes Treated Differently for Eviction Restrictions?

Tenants evicted from a single family home for owner move-in purposes are not entitled to claim protected status. Note that a single family home with an unwarranted in-law unit is considered to be a 2-unit property, and is not eligible for this special rule.

NEGOTIATED SETTLEMENTS

May I Pay My Tenant to Vacate?

As noted above, many landlords prefer to settle eviction lawsuits by paying the tenant to vacate rather than incur court expenses and attorneys fees and the risks of a trial. Other landlords attempt to circumvent the eviction process by offering money to a tenant to vacate, regardless of whether the landlord has a "just cause" to terminate the tenancy.

Are Tenant "Buyouts" Legal?

Tenant buyouts fall into a murky area of competing laws. On the one hand, the Rent Ordinance prohibits a landlord from endeavoring to recover possession of a rental unit unless the landlord has a just cause to terminate a tenancy. In addition, Proposition M, the "Landlord Harassment" provision of the Rent Ordinance still prohibits landlords and their agents from, among other things, influencing a tenant to vacate a rental unit through fraud, intimidation or coercion, or attempting to coerce the tenant to vacate with offer(s) of payments which are accompanied with threats or intimidation. Although the recent California Court of Appeal case struck down the Rent Board's power to award rent reductions and attorney's fees in these cases, landlords and their agents may still be penalized in the form of monetary fines, punitive damages and misdemeanors, and may still be exposed to attorney's fees awards in state court, for violations of the Landlord Harassment provision. On the other hand, constitutional law prohibits statutes which infringe on a landlord's freedom

of speech in the commercial landlord/tenant context. Therefore, one can argue that a landlord's oral request that a tenant vacate for compensation is an exercise of the landlord's free speech rights. The distinction may lie in the tone of the request. If the tenant is pressured into vacating, the landlord has probably committed a wrongful endeavor. If the landlord requested that a tenant move out but also expressed or acknowledged that the tenant has a legal right to stay, the landlord has probably exercised his or her free speech rights without violating the law.

What if My Tenant Offers to Vacate for Compensation?

A landlord may pay a tenant to vacate with little fear of liability if the conversation was initiated by the tenant. However, any agreement reached between the landlord and tenant should be reduced to writing and reviewed or prepared by a qualified attorney.

EFFECT OF EVICTIONS ON CONDOMINIUM CONVERSION

What Effect Will an Eviction Have on a Future Condominium Conversion?

Two recent ordinances severely restrict an owner's ability to apply for condominium conversion following a history of certain evictions. The first ordinance provides that any landlord-motivated eviction of a protected tenant between *November 16, 2004* and *May 1, 2005* restricts the building to only the last 25 units in the San Francisco annual condominium lottery. Even two-unit owner-occupied buildings are subject to this rule.

The second ordinance governs only certain landlord-motivated evictions (owner move-in or owner's relative move-in, demolition / permanent removal of a rental unit from housing use, capital improvements, and removal of the entire property from residential rental use under the state Ellis Act) with a notice date on or after *May 1, 2005*. This ordinance provides that the eviction of *a single protected tenant* renders the building ineligible for condo conversion forever. In addition, the eviction of two or more tenants from two or more units renders the building ineligible for applying for condo conversion for ten years: a 2-6 unit building may enter the lottery after the requisite number of units have been owner-occupied for ten years; a two-unit building may bypass the lottery after ten years of owner-occupancy by the same owners.

How do I Choose a Lawyer to Assist Me in Eviction Matters?

A Law Firm Specializing in Landlord/Tenant Issues Should Offer You:

- Experienced attorneys knowledgeable in all aspects of both the creation and termination of landlord/tenant relationships;
- Attorneys skilled at negotiating win-win settlements;
- Substantial trial experience;
- Expertise in TIC and condominium conversion issues.

What Sets Goldstein, Gellman, Melbostad, Harris & McSparran, LLP ("G3MH") Apart?

EVICTION EXPERIENCE:

G3MH has been a respected member of San Francisco's real estate community for nearly thirty years. During that time we have provided guidance to, and represented thousands of property owners in a wide range of landlord/tenant matters, including lease negotiations, voluntary termination of tenancy, evictions, and wrongful eviction defense.

SOCIAL CONSCIENCE:

G3MH does not represent landlords in landlord-motivated evictions of elderly, disabled, or catastrophically ill tenants.

TIC & CONDOMINIUM CONVERSION EXPERIENCE:

G3MH attorneys have been preparing the legal framework for TICs throughout Northern California since 1998. We have provided guidance to over five hundred Tenancy In Common groups, representing more than two thousand homeowners. G3MH has handled most of the condominium conversion applications in San Francisco, representing over three thousand units.

REASONABLE FEES:

G3MH provides landlord/tenant services on an hourly basis. The hourly rate charged will be based upon the level of experience of the attorney you work with, which we will endeavor to match to the task at hand. Because the extent to which a tenant will cooperate in the termination of her or his tenancy varies widely, it is not possible to estimate costs in advance.

SERVICE:

G3MH is a full-service law firm, which means that our attorneys and paralegals are available to offer additional guidance in tenancy-in-common issues, condominium conversion, title transfer and vesting, trust and estate matters, easements, property tax issues, and all other real estate matters. No other firm in San Francisco offers the staffing and resources to meet your needs in every aspect of residential real estate management.

About the Authors:

R. Boyd McSparran, partner, counsels small property owners on landlord/tenant issues, tenancies-in-common, condominium conversions, and general residential and commercial real property matters. Boyd has significant experience negotiating settlements, mediating disputes, and taking unlawful detainer and other real property cases to trial. A 1991 graduate of Franklin and Marshall College, and a student of The University of Edinburgh and Vermont Law School, Boyd earned his law degree from the University of California Hastings College of the Law in 1999 and joined the firm in 2000. Boyd can be contacted at (415) 673-5600 ext. 257, or via email at BMcSparran@g3mh.com.

Jeanne Grove's primary practice areas are San Francisco Rent Control law and business and real estate litigation. Jeanne has personally counseled hundreds of property owners and small business owners in a wide range of real estate and commercial matters, including landlord/tenant and eviction cases. Jeanne also has extensive experience in negotiating settlements and taking cases to trial. Jeanne earned her J.D. at the University of California, Hastings College of the Law in 2004, and received her B.A. in Political Science and French at the University of California, Los Angeles and graduated as an alumni scholar. Jeanne has practiced business and real estate law in San Francisco and Los Angeles and is admitted to practice in all the state courts of California, as well as the United State District Courts of the Northern District and Central District of California. Jeanne can be contacted at (415) 673-5600 ext. 244, or via email at JGrove@g3mh.com.

This article is for informational purposes only, and should not be relied on as legal advice about specific situations. Readers should consult an attorney if they need help with legal matters. We invite readers seeking legal assistance to contact one of our attorneys to discuss their needs.

This article summarizes the rules understood to be in effect on its publication date. Buyers and Owners should check with the author for recent developments before making commitments based on information in this article. Updated versions of this article may appear on the firm's website at www.g3mh.com.