

June 30, 2010

Owner Move-In Evictions in San Francisco

As Realtors assisting clients transferring ownership of tenant occupied property, you need to know a lot about the eviction laws of San Francisco. Many of your sellers will want to have, or deliver, vacant units. And many of your buyers will want an empty unit to move into.

This article discusses recovering possession of tenant-occupied units with an emphasis on owner move-in (OMI) evictions. The purpose of the article is to alert you to general issues and problems. For specific situations and problems, refer your clients to an attorney who specializes in San Francisco rent control matters.

The failure to provide accurate information, or competent referrals, to your clients can be disastrous. Can you imagine closing escrow and having your buyers learn they can't move into their property? Or that their owner move-in eviction will take a year or more and cost tens of thousands of dollars?

Here is all of the information you should know about OMI evictions.

Just Cause to Owner Move-in

San Francisco has eviction controls. This means that an owner cannot ask a tenant to vacate unless just cause exists to evict. There are some exceptions for new construction and certain types of tenancies. San Francisco's Rent Ordinance has 15 just causes or grounds for eviction. One ground is for when a landlord wishes to use and occupy a unit.

A landlord can also recover possession of a unit for a grandparent, grandchild, parent, brother or sister, or the landlord's spouse or the spouses of such relations, as their *principal residence* for at least *36 continuous months*, in the same building where the landlord resides or in a building where the landlord is simultaneously seeking possession for owner move-in purposes. The term spouse includes domestic partners.

Any OMI eviction must be done in *good faith*, with *honest intent* and *without ulterior reason*. In other words, the dominant motive for asking the tenant to leave is so that the owner, or owner's relative, can move in.

Other Important Requirements

An owner must have at least a *25% interest* in the property before starting an OMI eviction. For owners who took title before February 21, 1991, a 10% interest of record will suffice. And in all cases, two individuals registered as domestic partners can combine their ownership interests to meet the required percentage.

Unless a landlord will attempt a buy out of a tenant, the service of an eviction notice is the start of the OMI process. For tenants who have resided in the unit for less than 12 months, a *30 day notice* of termination of tenancy is used. For more than 12 months, a *60 day notice* is used. The contents and service of the notice is hyper-technical. Preparation and service of a notice should be done with the assistance of an attorney.

Of course, if a *comparable unit* is already vacant and available, a landlord cannot evict a tenant. If a *comparable unit* becomes vacant and available before an eviction is completed, the landlord must rescind the notice. If a *non-comparable unit* becomes available, the landlord must offer the unit to the tenant at a rent set by the landlord. Timing the service of a notice to avoid moving into a comparable unit or offering a tenant a replacement unit is bad faith.

It is also bad faith if the landlord or relative for whom the tenant was evicted does not move into the unit *within 3 months* after the tenant vacates and occupy the unit as that person's principal residence for a minimum of *36 continuous months*.

Once a landlord recovers possession of a unit by evicting a tenant for OMI purposes, that unit becomes the OMI unit and no other current or future owner may evict a tenant from any other unit for OMI purposes. In other words, *only one OMI unit per building*. However, a landlord may petition the Rent Board to occupy another unit if a disability or other similar hardship makes another unit desirable.

Tenant Rights in OMI Evictions

If a landlord who evicted a tenant for OMI purposes moves out and re-rents within 36 months, the landlord may only charge a rent not greater than that which would have been the rent had the original tenant not been evicted. Some rent increases are permitted. The evicted tenant must first be offered the right to rent their old unit.

In an effort to help tenants determine if a landlord should be moving into some other property instead, the law requires landlords to disclose quite a bit of information about other property owned by them and the other owners and the relative for whom the eviction is being pursued. A description of all residential properties owned, anywhere in the world, must be provided to the tenant and Rent Board.

Along with a proper eviction notice, a landlord must notify the tenant being evicted of their rights under the OMI law and their right to receive relocation costs. The current amount of relocation amount is *\$5,101 per tenant* with a maximum of *\$15,304 per unit*. In addition, disabled tenants or tenants 60 years or older, or households with minor children, are entitled to an *additional \$3,401*. These amounts change in March of each year depending on changes in the consumer price index.

Protected Classes

A controversial provision of the OMI law prohibits the eviction of tenants who are *60 years or older*, or *disabled*, and have resided in their unit for 10 or more years. Likewise, the eviction of *catastrophically ill* tenants who have lived in their unit for 5 or more years is prohibited. However, the enforceability of these laws is questionable and several constitutional attacks on these provisions have been successful.

Where a protected tenant occupies a single family home or a condo unit, a landlord may recover possession. Likewise, a landlord may recover a unit for a relative over the age of 60 where each unit in the building is occupied by a protected tenant.

At any time, a landlord may request a statement from a tenant as to whether they are protected from OMI evictions. The request, which must be personally served, requires the tenant to respond within 30 days. A copy of the request must be served on the Rent Board within 10 days of service on the tenant. The failure of a tenant to respond within 30 days is an admission that the tenant is not protected. A landlord can challenge a tenant's claim of protected status either at the Rent Board or in an eviction lawsuit.

Evictions During School Year

A recent addition to the law is a provision prohibiting evictions during the school year where a *minor* lives in the unit and the tenant has resided there for 12 months or more.

As with protected tenants, landlords may request a statement from a tenant as to whether they are protected from eviction due to a minor residing at the premises. Old request for information forms should be updated to ask about this new protected class of tenants.

The new law doesn't apply when there is only one rental unit in the building owned by the landlord or where the owner who will move into the unit has a child under the age of 18 who will also reside in the unit.

Disclosures to Tenants

Before a building may be sold, a seller must disclose to all tenants that:

- tenants cannot be evicted because the property is being sold
- rents cannot be increased because the property is being sold
- rental agreements cannot be changed because the property is being sold
- sellers have a right to show rental units during normal business hours
- tenants need not sign estoppel certificates unless their lease provides otherwise
- advice is available at the Rent Board

Thirty days after the close of escrow, a buyer must disclose to all tenants that:

- tenants cannot be evicted because the property is being sold
- rents cannot be increased because the property is being sold
- rental agreements cannot be changed because the property is being sold
- any tenants, sub-tenants or roommates who are lawful occupants will remain so
- housing services cannot be changed or severed

OMI Statistics

Back in the buying frenzy of 1996 to 2000, San Francisco landlords were averaging about 1155 OMI evictions each year. In the year 2008-2009, the number of OMI evictions fell to 143! And we are on pace for about 100 for 2009-2010. Ellis Act evictions are also way down from recent years.

There are three reasons for this decline. One reason is the economy. Another reason is that the San Francisco Board of Supervisors has made it more difficult (more confusing amendments to the rent laws) and more expensive (required relocation payments).

Tenant Buy Outs

But the biggest reason for the decline in OMI evictions is because *tenant buyouts* have proliferated. After the Rent Ordinance passed in 1979, landlords were sued for informally asking tenants to leave and for attempting to buy out a tenancy. This all changed when, in the case of *Baba v. CCSF Board of Supervisors*, it was held that landlords had a right of free speech. Since then, landlords have been talking "buy out".

Going through a lengthy and uncertain eviction process can be avoided if a tenant is willing to accept cash for keys. The process starts with negotiations about relocation compensation and a move out date. The process ends with a carefully drafted *move out agreement*. Before starting the buyout process, it is prudent to consult with an attorney.

Mr. Fried is a partner at Fried & Williams in San Francisco, California and can be reached at (415) 421-0100. The foregoing does not give legal advice or establish a landlord's standard of care for a specific situation. Consult an attorney for advice on particular matters. ©2010 by Fried & Williams LLP. All Rights Reserved.