

FAQs

(frequently asked questions)

Tenant Evictions in San Francisco

June 2012 Edition,
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Breaking News

1) The San Francisco Rent Ordinance was amended last year to provide for temporary Good Samaritan occupancy status, allowing a landlord to raise a tenant's rent beyond standard limitations and to terminate the tenancy after a certain period of time, to help provide temporary housing for tenants displaced by natural disasters such as fire, earthquake, landslide or similar emergency situations. Landlords are cautioned to follow the precise procedural and notice requirements provided by the enactment, otherwise their generous attempt to temporarily assist a tenant following a disaster could result in the creation of a long term tenant with a locked-in rent.

2) Reminder – Owner Move-In Evictions (OMIs) and Relative Owner Move-In Evictions (ROMIs) of a tenant with a minor child may **only** take place during the summer school break (currently between May 26, 2012 and August 19, 2012) 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. More within.

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, rental properties that are in foreclosure are subject to limited eviction control regardless of the first Certificate of Occupancy date (see below).

What are the Effects of Rent Control?

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

Rent Increase Limitations. The San Francisco Rent Ordinance limits the amount of annual rent increases. Landlords can only raise a tenant's rent by the amount set each year by the Rent Board. The current allowable maximum annual rent increase (March 1, 2012 through February 28, 2013) is 1.9%. Landlords can also petition for rent increases for capital improvements or increased operating and maintenance costs, but these increases are severely limited, and must first be approved by the Rent Board.

Eviction Restrictions. The SF Rent Ordinance provides that a landlord may not endeavor to recover possession of a rental unit absent one of sixteen (16) "just causes" for eviction. The Rent Ordinance also requires landlords to show "just cause" in order to recover possession of driveways, storage spaces, laundry rooms, decks, patios, gardens, garage facilities or parking facilities on the same lot, supplied in connection with the use or occupancy of a dwelling unit.

Some of the sixteen “just causes” are tenant-motivated: nonpayment or habitual late payment of rent, 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. The newest “just cause,” added in 2011, permits a landlord and displaced tenant to agree to a temporary Good Samaritan occupancy with a reduced rental rate following a certified emergency such as fire, earthquake, landslide, etc., allowing for a rent increase or eviction after expiration of the (12 or 24 month) Good Samaritan Status period.

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 rent-controlled properties, landlords may not seek to impose a rent increase more than **once every twelve months**. For properties not subject to rent control, landlords can increase the rent more often. A rent increase which does not exceed 10% requires a **thirty-day** notice; an increase greater than 10% requires a **sixty-day** notice.

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 utilities and 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, **rental units which were not subject to eviction control become subject to eviction control** if a tenant is residing in the unit at the time of foreclosure; 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. The evicting owner may own as little as 10% interest in the property **only** if the interest was recorded on or before February 21, 1991.

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. If the evicting owner fails either to move in to the unit within three months, or to occupy the unit thereafter 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. The “owner’s unit” can only be changed under extraordinary circumstances by filing a special petition with the Rent Board.

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. The summer school break for 2012 is from May 26 to August 19; however, because August 19 is a Sunday, an OMI eviction notice to a tenant with a minor child must be served such that the notice expires on a date *after May 26, 2012 and before August 17, 2012*.

Relocation Assistance. As of March 2012, the evicting owner must pay \$5,153 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 \$15,460 per unit. The evicting owner must also pay an additional \$3,436 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, or to single-family homes.

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

RELATIVE OWNER MOVE-IN EVICTIONS (ROMI)

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. 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 conversion of his or her property into condominium units may evict a non-protected 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 2012, the owner must issue a 60-day eviction notice and pay \$5,153 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 \$15,460 per unit, plus additional assistance to households with seniors, disabled occupants and/or children.

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/LEAD REMEDIATION 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 three months. If the work is likely to require longer than three months, 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 less than three months but runs overtime, the owner may petition the Rent Board for an extension. In addition, as of March 2012, the owner must issue a 60-day temporary eviction notice and pay \$5,153 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 \$15,460 per unit, plus additional assistance to households with seniors, disabled tenants, and/or children. 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 2012, each tenant is entitled to \$5,157.27 in relocation assistance from the owner, not to exceed \$15,471.78 per unit, plus additional assistance to households with seniors and disabled tenants. 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 a unit is re-rented, there are consequences. **No rentals are allowed in any unit during the first two years following Ellis Act evictions**. 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 from which a tenant was evicted is re-rented any time within the first **five** years, the owner must re-rent that 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 the length of tenancy, are entitled to additional relocation payments. As of March 2012, these tenants are entitled to \$3,438.17 each, subject to an inflation adjustment every March. In addition, tenants 62 years of age or older and tenants who are disabled and have resided in the unit for at least one year are entitled to **12 months'** notice to vacate.

When Must the Tenant Move?

UNLAWFUL DETAINER (UD) PROCEDURES

Most tenants are entitled to 3 days', 30 days' or 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.

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

SINGLE-FAMILY HOMES

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

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 a separately rented in-law unit is still 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 attorney's 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 prohibits landlords and their agents from, among other things, influencing a tenant to vacate a rental unit through fraud, intimidation or harassment, 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. Therefore, a landlord's oral request that a tenant vacate for compensation can be seen as an exercise of the landlord's free speech rights. The distinction may lie in the tone of the request. If a tenant is pressured into vacating, the landlord may have committed a wrongful act. If a landlord asks a tenant to consider moving out, while at the same time expressing or acknowledging the tenant's legal right to stay, the landlord has probably exercised his or her free speech rights without violating the law.

There is also some question about the enforceability of a buyout agreement. A settlement agreement in which a tenant agrees to vacate the property in exchange for dismissal of a lawsuit has been found by at least one court to be enforceable. However, outside this context, the enforceability of buyout agreements and stipulations to enter judgments against the tenant in order to re-possess the property is uncertain. Nevertheless, buyout agreements are extraordinarily common in San Francisco and historically have relied on the motivation of the tenants to collect the agreed monetary payment from the landlord in exchange for vacating the property.

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.

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

EFFECT OF EVICTIONS ON CONDOMINIUM CONVERSION

Two SF ordinances severely restrict an owner's ability to apply for condominium conversion following a history of certain evictions. The first ordinance covers a very small historical period, and 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.

A second, much broader ordinance applies to evictions based on 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 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 and dispute resolution issues.

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

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. G3MH attorneys have handled most of the condominium conversion applications in San Francisco, representing over three thousand units, and have provided guidance to over five hundred Tenancy-In-Common groups, representing more than two thousand homeowners.

SOCIAL CONSCIENCE:

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

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 cooper-

ate 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.

Arthur Meirson's practice focuses on San Francisco's Rent Control Law, landlord/tenant disputes, and general real estate, business and tort litigation matters. Arthur received his J.D., cum laude, from the University of California, Hastings College of the Law in 2009, where he was Senior Notes Editor of the Hastings Law Journal. Upon graduation, Arthur was inducted into the U.C. Hastings Pro Bono Society for his dedication to providing services to underrepresented communities and nonprofit organizations. He received his B.A., summa cum laude and Phi Beta Kappa, in history, political science, and Jewish studies from Rutgers University in 2005. Arthur served as an Assistant District Attorney with the San Francisco District Attorney's Office, handling numerous jury and bench trials, preliminary hearings, pretrial case settlements, and participating in policy development, and is admitted to practice in California and before the United States District Court for the Northern District of California. Arthur can be reached at 415/ 673-5600 ext. 237, or via e-mail at AMEirson@g3mh.com

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