

## FAQs

(frequently asked questions)

Tenant Evictions  
in San FranciscoAugust 2005 Edition,  
by R. Boyd McSparran  
& A. Jeanne Jorge**Breaking News**

On July 20, 2005, a San Francisco Superior Court Judge ruled in favor of a group of tenants in their claim that their landlords had failed to comply with state law in attempting to turn a six-unit rental property into owner-occupied TICs. While this ruling applies only to the property involved in the case, and should not affect properties with four or fewer units in any event, it may chill mass evictions in larger buildings.

Recent rulings by the San Francisco Superior Court suggest that 50% is now the minimum ownership requirement to pursue an Owner Move-In Eviction. San Francisco property owners had become accustomed to an ownership requirement of only 25%.

**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.

**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 that 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 (through February 28, 2006) is 1.2%. 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 fourteen "just causes" for eviction. Some of the fourteen "just causes" are tenant-motivated: nonpayment or habitual late payment of rent, breach of lease,

*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](http://www.g3mh.com).*

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nuisance, unlawful purpose, refusal to renew lease, failure to provide access, and holdover of 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, removal of a rental unit, capital improvements, substantial rehabilitation, lead paint remediation, and removal of the entire property from residential rental use under the state Ellis Act.

## 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. The tenant is entitled to a 60-day eviction notice, unless the tenant has occupied the unit for *less* than one year, in which case the tenant receives only a 30-day notice. There are several requirements and restrictions on performing an owner move-in (OMI) eviction, including:

**Requisite Ownership.** The San Francisco Rent Ordinance states that the evicting owner must own at least a 25% interest in the property. However, in 1998, the Board of Supervisors approved legislation raising this requirement to 50%. The current court interpretation of this dichotomy is that a 50% ownership interest is required.

**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.

**Relocation Assistance.** Each tenant who has resided in a rental unit for twelve or more months is entitled to \$1,000 in relocation assistance from the evicting owner. This requirement does *not* apply to tenants in a unit in a building containing only one unit.

**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.

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## 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. All other OMI-related requirements and restrictions apply.

### Does My Elderly Parent Get Special Treatment?

An exception to the protected tenant rule gives special treatment to an elderly parent: 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.

## REMOVAL OF RENTAL UNIT EVICTIONS

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

An owner who has obtained permits to remove an unwarranted "in-law" unit may issue a 60-day eviction notice. Attorneys for landlords and tenants argue over whether the 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. Each tenant who vacates temporarily is entitled to payment from the landlord of \$1,000 in relocation assistance, and 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.

## 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 to evict a tenant, the owner must evict all tenants from all residential rental units in the property. The tenants are given 120 days to vacate. The property is then subject to certain re-rental limitations.

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### 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 payment of \$3,000 each. Tenants in lower-income households are entitled to payment of \$4,500.

### UNLAWFUL DETAINER (UD) PROCEDURES

#### When Must the Tenant Move?

Most tenants are given 60 days' notice to vacate. Tenants who have resided in a unit for *less than one year* are given only 30 days' notice to vacate. 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 a condominium which has been sold to a bona fide purchaser for value, and to a condominium which was the only condominium retained by the subdivider after *all* other condominiums were sold, was occupied by the subdivider for one year, and was 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 \$1,000 each in relocation assistance and 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 these special rules.

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## 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. One might argue that a landlord’s oral request that a tenant vacate for compensation constitutes an endeavor to recover possession. On the other hand, the law prohibits statutes which infringe on a landlord’s freedom of speech in the commercial landlord/tenant context. One can therefore 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 tenant is free to choose to stay or vacate, 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?

A recent San Francisco ordinance provides that any eviction of an elderly or disabled tenant *after November 16, 2004*, cripples a property’s condominium conversion potential. Also, pro-tenant members of the San Francisco Board of Supervisors have announced their intention to try to stop condominium conversions “if evictions have occurred for the purpose of preparing the building for conversion” under San Francisco Subdivision Code Section 1386. Neither the new ordinance, nor Section 1386, enacted before the State passed the Ellis Act, have been subjected to judicial review, and the extent to which these laws may be superseded by the state Ellis Act, which specifically allows landlords to exit the residential rental business, is presently unknown.

### 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, Gibson & Harris, LLP (“G3MH”) Apart?

#### **EVICITION EXPERIENCE:**

G3MH has been a respected member of San Francisco’s real estate community for over twenty 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.



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**SOCIAL CONSCIENCE:**

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

**TIC & CONDOMINIUM CONVERSION EXPERIENCE:**

Beginning in 1998, G3MH attorneys have been preparing the legal framework for TICs throughout Northern California. We have provided guidance to nearly four hundred Tenancy In Common groups, representing more than two thousand homeowners. During the past three years, G3MH has handled most of the condominium conversion applications in San Francisco, including two-thirds of all lottery winners, as well as over 460 duplex units exempt from lottery requirements.

**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.

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*About the Authors:*

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