# The Fine Print™

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*The materials available in these pages are 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.*

***"ALWAYS READ THE FINE PRINT"***

# *RENT CONTROL TIGHTENS*

By R. BOYD MCSPARRAN

A recently enacted ordinance sponsored by Supervisor Chris Daly tightens Rent Control's grip on both landlords and tenants in San Francisco. Just *how* tight is the topic of much debate, and is sure to be the subject of several lawsuits over the next few months. However, since the law is barely weeks old, courts have yet to interpret the new rules amending San Francisco's Rent Stabilization and Arbitration Ordinance (Administrative Code Chapter 37).

Two aspects of the Daly legislation attracting the most attention concern "bluff evictions" and negotiated move-out agreements. The new legislation makes it a misdemeanor for a landlord or landlord's representative "to request that a tenant move from a rental unit or threaten to recover possession of a rental unit," unless the landlord has one of the fourteen just-causes for eviction and the landlord follows up the request or threat with an eviction notice. If such a request or threat results in the tenant moving out, the rental unit becomes subject to any restrictions which accompany the threatened type of eviction, regardless of an agreement to the contrary between landlord and tenant. For example, the offer "why don't I pay you to leave and save the headache of an Ellis Act eviction?" can result in criminal and civil liability for the landlord unless the landlord follows through with serving an eviction notice. And regardless of whether the landlord serves the notice, if the tenant leaves as a result of the request or threat, the property would be encumbered by the Ellis Act restrictions. This aspect of the new legislation is designed to eliminate any ability of, or incentive for, landlords to "bluff" an eviction in order to recover possession of the property to re-rent at market rate.

Another aspect of the Daly legislation focuses on negotiated move-out agreements. The new legislation dictates that, "[a]ny waiver of rights by a tenant under this Chapter shall be void as contrary to public policy unless the tenant is represented by independent counsel and the waiver is [judicially] approved." Opinions on the significance of this new language range from status quo (waivers have always been void) to revolutionary (buyouts now require court supervision). Perhaps the answer lies somewhere in the middle, requiring counsel and court approval for settlement agreements which relieve landlords of obligations which inure to the benefit of both tenants and the public at large (e.g., a buyout agreement permitting a landlord to re-rent at market rate), but not for agreements which require landlords to comply with existing statutory restrictions on re-renting (Owner Move-In, Ellis Act, etc.). Only time (and a lawsuit) will tell what interpretations of the new legislation will prevail. Meanwhile, the safest course is to try to conform all settlement agreements to the new legislation; be sure to consult with your attorney before having any eviction-related conversations with your tenant (or your landlord!).

The Daly legislation also amends several procedural aspects of evictions, and creates an additional obligation for sellers of multi-unit properties to inform prospective purchasers of the legal grounds for the termination of the tenancy for each unit to be delivered vacant at closing. If you are buying or selling a multi-unit property, be sure to discuss this new mandatory disclosure requirement with your real estate agent.

Not to be outdone by Supervisor Daly, Supervisor Matt Gonzalez introduced his own bill amending the Rent Ordinance on the same day the Daly legislation became law. The Gonzalez legislation would restrict parking and storage evictions, limit the imposition of banked rent

increases, curb evictions for violation of occupancy restrictions, provide additional relocation assistance to displaced tenants, and permit an aggrieved tenant to bring an action against a landlord's successor in interest. Whether any or all of these proposals become law remains to be seen, but they are a good indication that Rent Control will continue to tighten, not loosen, its grip on San Francisco.

About the Author

R. Boyd McSparran counsels small property owners on landlord/tenant issues, tenancies-in-common, condominium conversions, and general residential and commercial real property matters. 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. Boyd can be contacted at (415) 621-5600 ext. 257, or via email at BMcSparran@g3mh.com

## *CONDO CONVERSION - "McGOLDRICK" AND "H.O.P.E."*

On March 27th, 2002, The Honorable Judge A. James Robertson II of the San Francisco Superior Court struck down the so-called "McGoldrick" ordinance, enacted last August by the City Supervisors over Mayor Brown's veto. Although the new law sought to make condominium conversion more difficult for most homeowners, it also eased eligibility requirements for certain 2-unit buildings. Under "McGoldrick," 2-unit buildings in which only ***one*** unit had been owner-occupied for one year became immediately eligible to start the condo conversion process. Under prior law, only those 2-unit buildings in which ***both*** units had been owner-occupied for one year were eligible for condo conversion without winning the annual San Francisco condo conversion lottery.

On May 22nd, Judge Robertson's modified his Order, limiting its application only to properties which have been cleared of tenants via the Ellis Act. The door having been partially re-opened, the City resumed accepting and processing applications for 2-unit buildings with only one owner-occupant, excepting only properties with an Ellis Act history. But the story is not yet over. Both the plaintiffs in the anti-McGoldrick lawsuit and the defendant (the City Attorney) have requested further modifications of Judge Robertson's Order, and appeals may follow.

Meanwhile, the political focus may have shifted to Supervisor Tony Hall's H.O.P.E. ("Home Ownership Program for Equity") proposal, which expands existing conversion rules to enable renters to purchase their apartments as condominiums. Under H.O.P.E., if a minimum percentage of tenants indicate their intent to purchase their units ***and*** the owner agrees, the building may be condo-converted and the tenants who wish to buy can negotiate the purchase of their own units. Tenants declining to purchase are eligible for lifetime leases. H.O.P.E., which applies to properties with ***any*** number of units, would also allow condo conversion of 100% owner-occupied buildings without lottery participation. Look for a voter initiative based on the H.O.P.E. proposal to appear on the November 2002 ballot.

Further information about condo conversion is available on our web site at www.g3mh.com, or from our office by fax or mail. Please feel free to call to discuss condo conversion issues with David R. Gellman or R. Boyd McSparran.

***Did You Know*** **that Goldstein, Gellman, Melbostad, Gibson & Harris, LLP, has recently assisted our clients in:**

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- Reinstating disability insurance benefits?
- Litigating issues arising out of job termination and employment discrimination?

## *CONTACT INFORMATION*

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