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FAQs
(frequently asked questions)

Landlord-Tenant Issues in San Francisco

October 2012 Edition, by Jeanne Grove & Arthur Meirson

Breaking News

Effective January 1, 2012, residential tenants are allowed to post ***political signs.*** In multifamily properties, tenants can post political signs only in their own windows or doors. In single family residences, tenants may also post political signs in the yard, balconies and outer walls. Property owners can prohibit signs larger than six square feet and restrict the posting of political signs beyond 90 days before and 15 days after the election or vote.

Effective January 1, 2012, landlords are allowed to prohibit ***tobacco smoking*** on the property, including within dwelling units and within interior and exterior areas of the premises. Landlords must identify in new rental agreements exactly where smoking is prohibited. A rental agreement signed before January 1, 2012, which does not prohibit tobacco smoking cannot be changed without adequate written notice and tenant consent (see within).

Effective January 1, 2012, ***prohibitions*** by condo and co-op Homeowners Associations ("HOAs") against ***renting*** a unit are ***unenforceable***, unless the prohibition was already in effect before the owner acquired title to his or her unit. Rental prohibitions already in effect before 2012 are grandfathered in and remain effective.

Effective January 1, 2012, the jurisdictional limit of ***Small Claims*** court for actions brought by individuals increased from $7,500 to $10,000. This change is significant for both landlords and tenants since return of security deposits is one of the most common disputes. This change allows for a quicker and more cost-effective resolution of such disputes.

A new San Francisco Rent Board rule states that a landlord may only evict a tenant for a breach of a "unilaterally imposed term of tenancy" if that term is ***required by law***. Any other new terms of tenancy imposed without the tenant's written consent cannot be used as legal grounds for eviction. This new rule may conflict with state law; legal challenges are expected.

What Constitutes a "Rental Unit"?

The San Francisco Rent Ordinance defines a "rental unit" as the residential dwelling used and occupied by a tenant, along with the land, other parts of the building, housing services, privileges, furnishings, and facilities supplied in connection with the tenancy. Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks, patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy (SRO) hotels, supplied in connection with the tenancy, may not be severed from the tenancy

by the landlord without "just cause." For a more comprehensive discussion of matters relating to tenant evictions in San Francisco, please consult our companion FAQs on TENANT EVICTIONS IN SAN FRANCISCO. Rental units do not include housing accommodations in hotels occupied by a guest for fewer than 32 continuous days, dwelling units in certain types of non-profit cooperatives, housing accommodations in any hospital, convent, monastery, extended care facility, asylum, state-licensed residential care or adult day health care facility for the elderly or in school-operated dormitories.

What Is Being Rented?

A rental agreement – written or oral – defines the areas that are subject to the tenancy. Most residential rental units are located in multi-unit buildings with shared hallways, stairs, garage or storage spaces, yards, and other common areas. All parties should have a clear understanding, reduced to writing, of the boundaries of the leased premises (including parking and storage areas), and what common areas the tenant may access under specified conditions, as well as areas that are "off limits" except in an emergency, like roofs and fire escapes.

What Are the Advantages of a Written Lease?

A written lease defines the rules, responsibilities, and obligations of both landlord and tenant. A written lease can remove ambiguities that might otherwise become the subject of litigation. Examples include whether assignment/subletting is allowed, the number of occupants permitted, which areas are off-limits to tenants, where notices should be sent, whether smoking is prohibited in or around the premises, what constitutes habitual late payment of rent, etc. Rent Control rules prohibit landlords from changing the terms of an existing tenancy; therefore, all tenant responsibilities and prohibitions should be clearly defined at the beginning of the tenancy. Finally, when property owners sell tenant-occupied properties, written leases allow for easier transitions, and reduce disputes between existing tenants and new landlords regarding their respective obligations and responsibilities.

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. Units in hotels, motels, tourist houses, and rooming houses, where the unit has not been occupied by the same tenant for ***32*** or more continuous days, are ***not*** covered by the Rent Ordinance. Units whose rents are regulated by another government authority, such as subsidized housing projects and senior housing, may be subject to certain provisions of the Rent Ordinance. Many single-family homes and condominiums are exempt from the rent increase limitations of the Rent Ordinance, but are still subject to eviction restrictions. Under recent legislation, ***all rental properties*** that are in ***foreclosure*** are subject to limited eviction controls set by the state.

What Are the Effects of SF's Rent Control Law?

There are two main features of Rent Control in San Francisco: Rent increase limitations and eviction restrictions. The SF Rent Control Ordinance also restricts changes in the terms of a rental agreement once a tenant has moved in.

Rent Increase Limitations The San Francisco Rent Ordinance limits the amount of annual rent increases. Landlords may not seek to impose a rent increase more than ***once every twelve months.*** Also, 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%.

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. The "just causes" are either 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) or landlord-motivated (owner move-in, demolition of a rental unit, capital improvements, lead paint remediation, Ellis Act/withdrawal from rental use). For a more comprehensive discussion of matters relating to tenant evictions in San Francisco, please consult our companion FAQs on TENANT EVICTIONS IN SAN FRANCISCO.

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.*** However, there are exceptions to this rule and owners should not simply assume that a single-family home or condominium is exempt from rent increase limitations in every case. Also, single-family homes or condominiums that are exempt from rent increase limitations and were originally built before June 13, 1979 ***are*** subject to ***eviction restrictions***.

What Happens After a Lease Term Expires?

If the property is subject to SF Rent Ordinance ***eviction restrictions,*** the tenant is entitled to continue renting the unit after expiration of a lease term ***regardless*** of any language in the lease agreement stating otherwise. If the landlord does nothing, the tenancy automatically converts to a month-to-month tenancy, and the same terms and conditions of the original lease agreement will apply, subject to the landlord's right to increase rent in accordance with the limitations set by the Rent Board, as discussed above. If, however, the landlord asks the tenant to renew the lease for another fixed term of the same duration, and the tenant ***refuses***, the landlord may seek to terminate the tenancy on the basis of the tenant's refusal.

What if the Tenant Dies?

If a tenant dies in the middle of a fixed-term rental agreement, the tenancy continues until the end of the fixed term. Responsibility for the rest of the lease term passes to the tenant's executor or administrator. On the other hand, if a tenant dies during a month-to-month tenancy, the tenancy ends after notice of the tenant's death to the landlord, 30 days after the last payment of rent before the tenant's death. A landlord is still required to return any security deposit to the administrator of the tenant's estate within 21 days of regaining possession of the rental unit, less permitted deductions for unpaid rent, damages, excepting ordinary wear and tear, and cleaning costs. Finally, if the death occurred on the premises, an owner or the owner's agent is required to disclose to prospective renters and buyers of the property that a death occurred and the manner of the death. The disclosure is mandatory for 3 years. Thereafter the disclosure is only required if asked. One important exception to this disclosure requirement is that the owner or owner's agent may not disclose that the decedent was ill with, or died as a result, of HIV/AIDS.

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, San Francisco 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, and 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.

What Are "Banked" Rent Increases?

As described above, the Rent Board limits annual rent increases by small percentages which are announced every year on March 1. These rent increases can be imposed once annually on the tenant's "anniversary date" which is typically the date on which the tenancy began. For a variety of reasons, current and past landlords may have chosen not to impose some or all of these rent increases. The Rent Ordinance permits landlords to "bank" these uncharged amounts and impose them later. Rent increases that are "banked" are calculated by adding the simple percentages of missed years, going as far back as 1982. That sum is then multiplied by the current rental rate, which yields the new rental rate. The increases are ***not*** compounded. New landlords are permitted to impose "banked" rent increases that were not imposed by their predecessors. To impose a "banked" rent increase, a landlord must follow the same rules as for any other rent increase, that is, by serving a thirty- or sixty-day notice depending on whether the increased amount is 10% or more than the rent for the preceding 12 months. "Banked" rent increase should be calculated very carefully to make sure a landlord does not accidently overcharge for rent. If the increase is imposed on some date other than the "anniversary date" the landlord will lose one year's increase and the "anniversary date" for future rent increases will shift.

What Fees and Expenses Can be Passed Through to Tenants?

Landlords can petition the SF Rent Board for rent increases for ***capital improvements, increased operating and maintenance costs, and utility, water, and property tax pass-throughs***, but these increases are severely limited, and must first be approved by the Rent Board. Many pass-through expenses are amortized over a period of 10, 15, or 20 years. The Rent Board has a number of special petitions and forms that must be utilized and completion of these documents often requires the input of an expert. Tenants are also entitled to notice and an opportunity to object to these types of increases at a Rent Board hearing. While there is no fee for a landlord to file a Rent Board petition for pass-through rent increases, legal and expert fees often can become expensive. On the other hand, landlords may pass through to their tenants half of the annual Rent Board fee without a petition. The Rent Board fees are assessed on rental units covered by Rent Control. The current fee is $29 per apartment unit ($14.50 per residential hotel unit).

What Are My Obligations to Subtenants?

A landlord may place ***reasonable restrictions*** on subletting, except in the case of family members, who are allowed to live with the tenant regardless of any lease restrictions. Such restrictions must be set forth in a written lease to be enforceable. Landlords are generally required to permit tenants a one-for-one replacement of departing roommates ***once annually*** per existing tenant residing in the unit. Landlords also must permit certain family members to be added to the tenancy subject to occupancy limitations based on the number of bedrooms within the unit. These rules trump a blanket prohibition against subtenants in a lease. Also, landlords may be found to have waived any valid prohibitions on subletting if the landlord knew or should have known about the subtenant and did not promptly seek to remove the unauthorized subtenant. A lawful subtenant in a rent-controlled unit is entitled to all of the same protections as a tenant under the San Francisco Rent Ordinance, including rent increase limitations; however, in instances when ***all*** original tenants have vacated, a landlord who has taken proactive steps ***may*** be able to charge a new rent to the hold-over subtenants as if they were moving into a vacant unit (see below).

What Are the Subtenants' Rights When All Originals Tenants Vacate?

Generally, a landlord has the right to evict any unauthorized subtenant when all the original tenants vacate. Also, under both state and local law, a landlord has the right to re-set the rent for the unit as if it were vacant, when all original tenants vacate. However, a

landlord's actions, or failure to act, can affect these rights. Usually, if the lease allows subletting, then subtenants are ***not*** "unauthorized" and may not be evicted. Even if the lease agreement prohibits subletting, the landlord's knowledge of an unauthorized subtenant can constitute a waiver of a landlord's right to evict when the original tenants vacate. To preserve the right to re-set the rent on subtenants after original tenants vacate, a landlord whose building is subject to the San Francisco Rent Ordinance may consider serving a written notice that advises all occupants of the landlord's right to re-set the rent ***within 60 days of actual knowledge of the arrival of subtenants***, commonly known as a **"6.14 Notice."** State law does not require service of a "6.14 Notice" and there is currently a vibrant debate in the San Francisco landlord-tenant legal community as to whether landlords should issue 6.14 Notices, and what language such notices should contain. These issues are further complicated when a landlord is forced to allow a one-for-one replacement of a tenant, or must accept family members of a tenant notwithstanding a lease prohibition. This is a gray area of San Francisco Rent Control law that is still evolving.

What Rights and Obligations Do "Master Tenants" Have?

"Master Tenants" are treated like landlords in some respects with regard to their subtenants, and as a result they have many similar rights and obligations. For instance, Master Tenants can evict their subtenants without "just cause," but only if they give their subtenants a written disclosure of this right at the beginning of the subtenancy relationship. Master Tenants are required to disclose to subtenants in writing, before the beginning of the subtenancy relationship, the amount of rent they pay to the property owner. With regard to setting a rental rate, Master Tenants are not allowed to charge a rent that is greater than the subtenant's proportional share of the rent paid to the property owner. This proportional share is based on the shared value of common spaces and exclusive use spaces (such as bedroom size or value, access to garage or storage, or private bathroom), shared or exclusive amenities and utilities, and other reasonable special obligations.

Do Rent & Eviction Control Protections Apply to a Landlord's Roommates?

A landlord who is an owner of the property who resides in the same rental unit as his or her tenant is not subject to eviction restrictions and can evict the tenant without "just cause." However, the landlord is still subject to the rent increase limitations described above. Further, the Rent Board has recently announced an unwritten advisory opinion that a property where a landlord resides with more than one tenant-roommate is treated as though it is a "boarding house," in which case both the rent increase limitations and the eviction restrictions apply. Litigation or legislative amendments to the Rent Ordinance are expected to clarify this interpretation.

When Can I Enter the Tenant's Unit?

Landlords and their agents have limited rights of access to tenant-occupied units, but may not abuse those rights to harass a tenant. A landlord may enter a dwelling unit without the tenant's permission and without a Court order only in cases of emergency, to make repairs or improvements, to supply necessary or agreed services, to exhibit the unit to buyers, tenants, lenders, etc., to make certain move-out inspections, or when the tenant has abandoned or surrendered the premises. Generally, entry may only be made during normal business hours following reasonable ***written*** notice (24 hours is presumed reasonable). The law does not specify what "normal business hours" are and unless there is a written lease defining those hours more broadly, "normal business hours" will typically be from 9:00 a.m. to 5:00 p.m., Monday through Friday. Written evidence of each entry must be left inside the unit if the tenant is not present during the entry. If the property is being sold, a written notice to the tenant can require access to show the unit to buyers for 120

days on 24 hours' ***verbal*** notice, in person or by phone. Tenants may waive these rights and allow a landlord or the landlord's agent to enter without first providing 24 hours' notice or for a reason not listed above.

Can I Restrict Smoking in My Building?

Yes. Effective January 1, 2012, residential landlords can prohibit tobacco smoking within any unit, common space, and interior and exterior portions of their buildings. For new tenants, the smoking restrictions and prohibitions must be described in the rental agreement. For existing tenants with pre-existing permission to smoke tobacco within their units or around the property, a prohibition would constitute a change in the terms of tenancy requiring mutual consent to be enforceable.

How Can I Deal with Noisy or Disruptive Tenants?

Written leases should contain rules that address acceptable tenant behavior, e.g., a provision limiting excessive noise during certain hours of the day. Tenants who violate such terms of tenancy subject themselves to the possibility of eviction for breaching lawful obligations of their lease. Landlords owe an implied covenant of quiet use and enjoyment to other tenants on the property and could be liable to neighbors for permitting a nuisance if they are not proactive in addressing noisy or disruptive tenant issues. Landlords should issue warnings to their tenants before serving 3-day notices to cure or quit, and if necessary, promptly pursue unlawful detainer lawsuits to evict noisy or disruptive tenants. Sometimes noise issues can be resolved or substantially improved by requiring carpeting over padding on hardwood floors or adding insulation between floors and walls; such investments can substantially reduce costly disputes in the future.

Must I Provide a Recycling Service for My Tenants?

Effective July 1, 2012, residential buildings with ***five or more units*** (or any multi-family residential dwelling or business that generates more than four cubic yards of commercial solid waste per week) is required to arrange for recycling services. Property owners may require tenants to separate their recyclable and compostable materials.

Do I Have to Compost?

In 2009, San Francisco passed an aggressive environmental law mandating every residence and business to have three separate color-coded bins for waste: blue for recyclables (e.g., cans, bottles, paper); green for compost (e.g., food scraps, leaves, dirty paper napkins); and black for trash (e.g., plastic bags, Styrofoam, diapers). Failing to properly sort refuse could result in warnings followed with a fine up to $1,000 per offense. A moratorium on fines allowing San Francisco property owners and tenants to become familiar with the new law expired in July 2011.

Do Units Require Carbon Monoxide Detectors?

State law requires owners of housing units to install carbon monoxide devices in each dwelling unit having fossil fuel burning heaters or appliances, fireplaces, and/or attached garages. The law is being rolled out in stages. The law became effective for ***single-family*** dwelling units on July 1, 2011. ***Multi-family*** dwelling units will be required to comply by ***January 1, 2013***.

What Are the Rules on Security Deposits?

A security deposit is essentially a sum of money collected by a landlord from a tenant at the beginning of the tenancy to be used for the advance payment of rent (such as "last month's rent") or to compensate the landlord for a tenant's default in payment of rent, to repair extraordinary damages to the premises caused by a tenant or the tenant's guests, or to clean the premises upon termination of the tenancy. For unfurnished units, the security deposit may not exceed two month's rent; for furnished units, the security deposit may not exceed three month's rent. A landlord must notify the tenant of his or her right to a

pre-move-out inspection within 14 days of the tenant's move-out date, allowing the tenant to remedy possible deductions from the security deposit. Within 21 days after a tenant vacates, the landlord is required to return the security deposit, plus interest (see below). A return of anything less than the full amount of the security deposit requires an itemized statement indicating the basis for, and the amount of deductions. Disputes over the return of security deposits between landlords and tenants are frequent; it is important for landlords to understand the timing and notice requirements required under state law to avoid or prevail in litigation.

Is Interest Due on Security Deposits?

San Francisco requires that landlords who collect security deposits pay simple interest to their tenants annually. This rule applies to all residential units in San Francisco, including units that are not subject to the Rent Ordinance. Landlords who pay the Rent Board fee may deduct part of the fee from the accrued security deposit interest. The rate of interest on security deposits for March 1, 2012 through February 28, 2013 is 0.4%, the same as the previous year. The new rate is published annually by the Rent Board in early January for the one-year period beginning March 1st.

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;
- Skills in drafting and reviewing leases;
- Substantial experience appearing before the SF Rent Board;
- A thorough understanding of the SF Rent Ordinance.

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.

Social Conscience:

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

Reasonable Fees:

G3MH provides landlord/tenant counsel 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.

Service:

G3MH is a full-service law firm, which means that our attorneys and paralegals are available to offer additional guidance in evictions, 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:

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.