

REAL ESTATE GROUP UPDATE

June 2002

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Protectionism Gone Awry? The Daly Eviction Amendment to the San Francisco Residential Rent Stabilization and Arbitration Ordinance

**(Administrative Code Chapter 37,
Sections 37.9, 37.9B and 37.10A)**

While ripe for judicial challenge, San Francisco Supervisor Chris Daly's Amendment to Sections 37.9, 37.9B and 37.10A of the San Francisco Rent Stabilization and Arbitration Ordinance (Rent Ordinance) went into effect today, on June 2, 2002 (Daly Amendment). Touted as, effectively, a "bluff eviction buster," the Amendment represents the latest attack on the interests of residential real property owners in San Francisco. The Daly Amendment purportedly attempts to limit "bluff" evictions; however, among other things, the Amendment significantly expands civil and criminal liability of landlords and their representatives, expressly voids tenant waivers of rights under the Rent Ordinance in non-judiciary-supervised settlement agreements, and effectively denies tenants their right of self-representation.

Some of the provisions in the Daly Amendment [such as Sections 37.9B(c) and (e), and 37.10A(d), (f) and (h)] simply seek to ensure greater compliance with the existing Owner Move-In (OMI), Relative Owner Move-In (ROMI) and Ellis Act (removal of units from the rental market) mandates under the Rent Ordinance and new Daly provisions thereto. The compliance enforcement measures include additional disclosure, recording and notification requirements. For instance, Section 37.10A(h) makes it unlawful for a seller to knowingly fail to disclose in writing to a buyer, prior to entering into a contract for the sale of any property consisting of two or more residential units, the specific legal ground(s) for the termination of the prior tenancy of each residential unit to be delivered vacant at the close of escrow.

Other Daly provisions, however, such as Section 37.10A(c), extend civil and criminal liability of landlords and any other persons who willfully assist a landlord, including the landlord's attorney or legal representative, in "request(ing) that a tenant move from a rental unit" or "threaten(ing) to recover possession of a rental unit, either verbally or in writing, unless: (1) the landlord in good faith intends to recover said unit under one of the grounds enumerated in Section 37.9(a) or (b); and (2) within five days of any such request or threat the landlord serves the tenant with a written notice stating the particular ground under Section 37.9(a) or (b) that is the basis for the landlord's intended recovery of possession of the unit."

It remains to be seen whether the judiciary will interpret a property owner's or its agent's discussion with a tenant regarding the tenant's willingness to voluntarily vacate the rental unit as a "request" that a tenant move. If such generalized discussions, devoid of a specific threat of eviction, trigger liability under the Rent Ordinance, no landlord or its agent will be able to broach the subject of a potential buy-out with a tenant in San Francisco.

Even assuming that the Court either rejects the "request" language on United States Constitution First Amendment grounds or otherwise narrowly interprets the provision to survive constitutional challenge, the landlord continues to face the prospect of civil and criminal liability after a tenant vacates a unit pursuant to a buy-out. The landlord's continued exposure to liability stems from further aspects of the Daly Amendment.

The Amendment, at Section 37.10A(g), makes any waiver of rights by a tenant under the Rent Ordinance "void as contrary to public policy unless the tenant is represented by independent counsel and the waiver is approved in a Court-supervised settlement agreement, or by a retired judge of the California Superior Court sitting as a mediator or arbitrator by mutual agreement of the tenant represented by independent counsel and the landlord."

Presumably, a landlord, its attorney or legal representative who obtains a release of all claims from the tenant, including but not limited to wrongful eviction claims, breach of warranty of habitability claims, and rent disgorgement claims, without judicial oversight, shall be in violation of Section 37.10A(g).

The net effect of the dual requirement of both independent legal representation and judicial oversight is a deprivation of a tenant's right to self representation in eviction and other legal proceedings. Further, the dual requirement effectively discourages landlord-tenant contract negotiation and conflict resolution outside of the dreaded unlawful detainer eviction lawsuit.

It would appear that the tenants, whose interests the Daly Amendment was clearly intended to further, have been inadvertently set-back by the Amendment's protectionism. Since Section 37.10A(g) requires judicial oversight of all settlements releasing Rent Ordinance claims, the filing of an eviction lawsuit by the landlord becomes virtually unavoidable. Consequently, more tenants will experience the deleterious ramifications of

litigation in terms of cost, delay, and among other things, emotional upheaval. Additionally, the fact of an eviction lawsuit can trigger negative credit reporting, which ultimately will compound the tenants' ability to secure future housing. Even landlords that do not request credit reports frequently ask in the rental application if the prospective tenants have ever been named in an eviction lawsuit.

Any person who violates Rent Ordinance Sections 37.10A(a), (b), (c), (d), (g) or (h) is guilty of a misdemeanor. Under the Daly Amendment, such persons shall be punished by a mandatory fine of \$1,000.00, and may be punished by imprisonment in the County Jail for a period of not more than six months. Under Section 37.10A(i), each violation constitutes a separate offense.

The foregoing does not detail every aspect of the Daly Amendment and does not substitute for advice of counsel. Every landlord and landlord agent, property manager, attorney and other representative involved with property in San Francisco should be aware of the Amendment's terms and consequences as they are surprising, if not over-reaching, and serious until overturned in a court of law.

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Landlords and their representatives should obtain legal advice from an expert in San Francisco Residential Landlord-Tenant law before discussing occupancy issues with San Francisco residential tenants. Those who dare attempt to navigate the turbulent waters of this law without the advice of experienced counsel do so at their own risk.

Should you have any questions regarding the Daly Legislation or on any other aspect of San Francisco Residential Landlord-Tenant law, please do not hesitate to contact us: Lizbeth R. Gordon, Esq. at lgordon@gordonrees.com and Elizabeth T. Erhardt at eerhardt@gordonrees.com of Gordon & Rees, LLP's San Francisco Office, 275 Battery Street, 20th Floor, San Francisco, California 94111 (415) 986-5900 (www.gordonrees.com.)