



THE SPECULATOR LOOPHOLE: ELLIS ACT EVICTIONS IN SAN FRANCISCO

A Report by Tenants Together & The Anti-Eviction Mapping Project

April 2nd 2014

ACKNOWLEDGMENTS



ANTI-EVICTION MAPPING PROJECT



Dean Preston, Executive Director of Tenants Together, authored this report. Dean is an attorney and a leading expert on the Ellis Act. Tenants Together is a nonprofit organization dedicated to defending and advancing the rights of California tenants to safe, decent, and affordable housing. Tenants Together is California's only statewide renters' rights organization.

Tenants Together collaborated with the Anti-Eviction Mapping Project to prepare this report. The Anti-Eviction Mapping Project has been at the forefront of collecting, analyzing and presenting data on Ellis Act evictions in San Francisco. TT wishes to acknowledge and thank Erin McElroy and Jennifer Fieber of the Anti-Eviction Mapping Project for their extraordinary work on data and visualizations for this report, Aimee Inglis of Tenants Together for graphic design, and Sasha Ellis of Tenants Together for research assistance.

The report is available, with additional visualizations, online at www.tenantstogether.org/ellisreport

Cover photo: Harvey Castro, Studio369 Photography

KEY FINDINGS:

The Ellis Act and its legislative history reveal that the purpose of the Act was to allow landlords, not speculators, to exit the rental housing business

3,610 units have been removed from the rental market in San Francisco under the Ellis Act (1997-2013).

At least 10,000 San Francisco tenants have been displaced through the Ellis Act.

51% of the Ellis Act evictions were commenced by owners within the first year of their ownership of the property. The majority of those were during the first six months of ownership.

78% of Ellis Act evictions are commenced by owners within their first five years of ownership of the property.

30% of units are Ellised by known serial evictors, meaning they have used the Ellis Act to evict tenants in other properties. Many of these investors have entered, exited, re-entered, and re-exited the rental business, evicting tenants from multiple buildings.

EXECUTIVE SUMMARY

California's Ellis Act was adopted by the Legislature to provide landlords a statutory right to exit the rental housing business after a California Supreme Court decision denied a landlord's claim to a constitutional right to exit the rental business. At the time, proponents framed the Ellis Act as a last resort for long-term landlords in rent control jurisdictions that no longer wanted to endure the alleged personal or psychological demands of being a landlord.

For ten years after the Act was enacted, Ellis Act evictions were rare. In fact, the Ellis Act was largely irrelevant until the late 1990s when property owners in San Francisco began using the Ellis Act to evict tenants. Ellis Act evictions peaked in 2001-2003, but remained high until the housing market crashed in 2008. After several years of lower eviction rates, Ellis Act evictions rose sharply in 2012 and 2013 in San Francisco, prompting recent protests and media attention.

This report has three primary objectives: first, to examine whether the current rise in Ellis Act evictions is consistent with the purposes of the Act; second, to quantify how the Act is being used and analyze trends; and third, to outline policy proposals that would limit any misuse of the Act. To complete the report, Tenants Together analyzed the complete legislative history of the Ellis Act, San Francisco Rent Board data and reports, property records, and corporate filings.

The data reveals extensive displacement due to the Ellis Act, with most evictions by recent purchasers, and a disturbing number by serial evictors.

This report recommends two reforms to ensure that use of the Ellis Act is confined to long-term landlords, not real estate speculators who get into the rental business just to get out of it. The Act should not be available to new owners of property or to owners that have previously exited and reentered the rental business. These two changes would help limit use of the Ellis Act to its intended beneficiaries: landlords, not speculators.

PART I: INTENT OF THE ELLIS ACT

The Ellis Act¹ was adopted in response to the California Supreme Court's decision in *Nash v. City of Santa Monica* (1984) 37 Cal. 3d 97. In *Nash*, a landlord argued that the city's requirement that he obtain a removal permit in order to demolish his building was unconstitutional. The Supreme Court disagreed. The Court rejected the argument that a property owner has a constitutional right to exit the rental housing business.

The next year, Senator Jim Ellis (R - San Diego) introduced SB 505, which was eventually signed into law. The Act provides that no public entity shall "compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease." The Act expressly states: "It is the intent of the Legislature in enacting this chapter to supersede any holding or portion of any holding in *Nash v. City of Santa Monica*, 37 Cal.3d 97 to the extent that the holding, or portion of the holding, conflicts with this chapter, so as to permit landlords to go out of business."² Thus, the Ellis Act provides landlords with a statutory right to exit the rental housing business.

The Ellis Act contains certain limits. It lists local powers that it does not preempt, including the city's power to mitigate the impact on displaced persons.³ Likewise, the Act makes clear that it does not relieve a party to a lease or rental agreement of any obligations under that agreement.⁴ The Act allows local governments with rent control systems to adopt specified protections for tenants that are set forth in the Act, such as a 120 day notice to tenants if a landlord is evicting under the Ellis Act.⁵ Finally, the Act explains that it is not intended to do certain things, including interfere with the local governments' power over land use or regulation of the conversion of existing housing units to condominiums, other subdivided interests, or nonresidential uses after withdrawal of units.⁶

The California Association of Realtors (CAR) sponsored SB 505. In its statement of support, CAR explained: "SB 505 very fundamentally and simply permits the owner to cease offering property for rent. It does not permit the owner to change the property to another use."⁷ Notwithstanding CAR's statement that the Ellis Act "does not permit the owner to change the property to another use," that is exactly how the law has been used. In San Francisco, most Ellis Act evictions are performed in order to convert the units to tenancies-in-common (TICs), a form of ownership similar to condominiums.⁸

1 California Government Code Section 7060, et seq.

2 Government Code sec. 7060.7.

3 Government Code sec. 7060.1(c).

4 Government Code sec. 7060.1(e).

5 Government Code sec. 7060.4.

6 Government Code sec. 7060.7.

7 California Association of Realtors, "SB 505 Statement of Support", August 16, 1985.

8 The ultimate fate of units removed from the rental market under the Ellis Act appears to vary by jurisdiction. In Los Angeles, for example, the Ellis Act is often used to remove tenants in advance of a building demolition.

ELLIS ACT RESEARCH FINDINGS

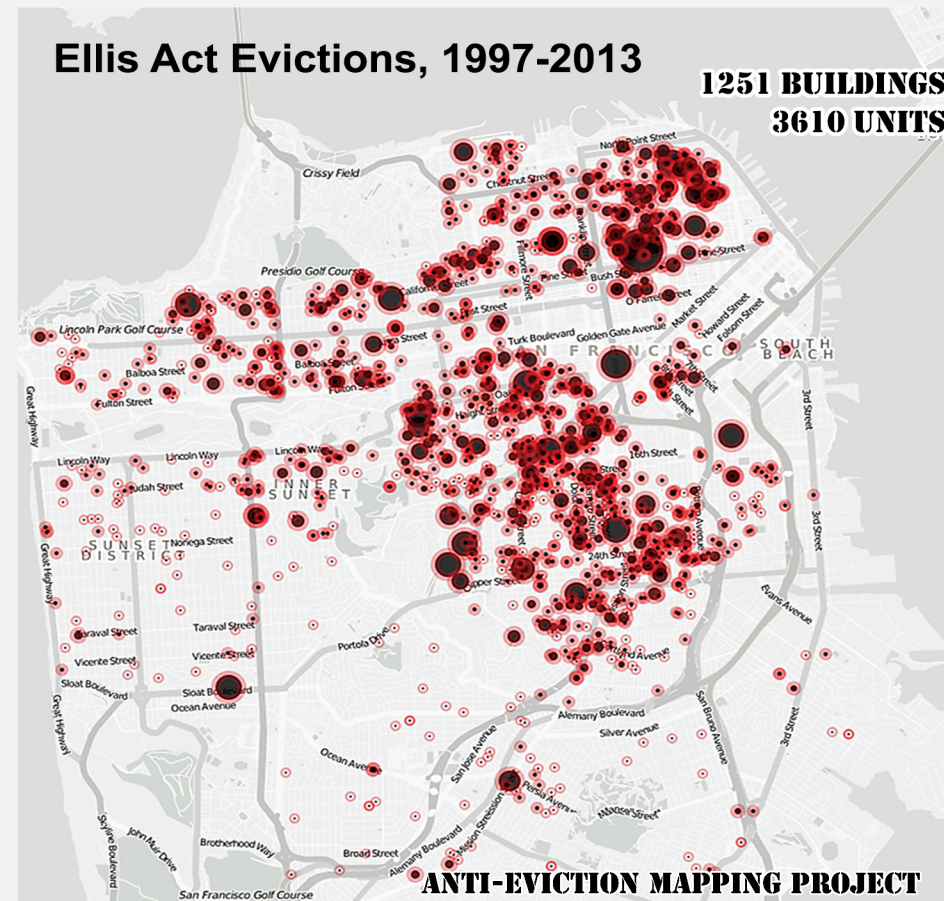
CAR’s “reasons for support of SB 505” focused entirely on freeing landlords of the burdens of being in the rental housing business. According to CAR’s support letter:¹

“Requiring a person to continue to offer his or her residential real property for rent is a requirement that a person (landlord) continue in a business or occupation which involves very considerable personal liability ... and a continued devotion of personal services inherent in the management of rental property including the very considerable psychological demands of the provisions of those services, as evidenced by the pressures of tenant relations, is contrary to sound public policy affecting a personal freedom which may approach or comprise involuntary servitude.”

Non-landlord speculators are not referenced in CAR’s reasons for support or in the Act itself. The final language of the Act confirmed that the Act sought to “permit landlords to go out of business.”²

The Ellis Act was not intended to strip cities of their power to prevent speculators from converting rental housing. To the contrary, the Act states that it is not intended to “interfere with local governmental authority over land use, including regulation of the conversion of existing housing to condominiums or other subdivided interests or to other nonresidential use following its withdrawal from rent or lease under this chapter.”³

These intended limits of the Act were subverted by a court case in 2003. In *Tom v. CCSF*,⁴ the Court struck down San Francisco’s attempt to regulate TICs as unconstitutional.⁵ This court decision interfered with the City’s ability to regulate the change of use, giving a green light to speculators in San Francisco. As a result, Ellis Act evictions for purposes of converting rental units to TICs (and eventually condominiums) have persisted despite the promises and intent of the Act.



For the first decade after passing, the Ellis Act was not used much in San Francisco. Ellis Act evictions really began in San Francisco in 1997. From that year through 2013, 3,610 rental units were withdrawn from the market under the Ellis Act in San Francisco.

	Buildings	Units
All Ellis Petitions Filed 1997-2013:	1308	–
Re-Files (duplicates)	57	–
Ellis Petitions (De-duplicated) 1997-2013:	1251	3610

The map shows all properties/units removed from the rental market in San Francisco under the Ellis Act from 1997 to 2013. The size of the circle on the map shows the relative number of units in the property.

Tenants Together conservatively estimates that over 10,000 tenants have been displaced from buildings with formal Ellis Act filings in San Francisco. This figure assumes an average of three tenants per household.¹ Importantly, the figure does not include buildings from which all tenants are displaced by threats of an Ellis Act eviction. Those buildings will not show up in any public record concerning Ellis Act petitions or evictions. Tenant groups estimate that for every tenant displaced by an Ellis Act eviction, there are multiple tenants displaced by Ellis Act threats. Further research is needed to determine how many tenants have been displaced in this manner. Without that data, our estimate does not capture the full extent of the displacement caused by the Ellis Act.

1 California Association of Realtors, Statement of Support, August 16, 1985, page 2-3.
 2 Government Code Section 7060.7
 3 Government Code Section 7060.7(a)
 4 *Tom v. City & County of San Francisco* (2004) 120 Cal.App.4th 674
 5 The Court struck down a requirement that exclusive rights of occupancy, a key part of TIC agreements, be recorded.

The law requiring such interests to be recorded would have effectively forced TICs through the condominium conversion process and the limits on conversions in San Francisco. The Court held that the requirement to record such interests was unconstitutional based on co-owners right of free association.

1 Rent Board data regarding number of occupants per units is not public and could not be obtained for this report. Ellis Act evictions typically target bigger units that are more profitable for conversion to condominiums and tenancies-in-common (TICs), while the citywide average for household size is lowered by studios, single room occupancy (SRO) units, and other smaller dwellings that are not generally Ellis eviction targets.

IMPACT ON SENIOR AND DISABLED TENANTS

Many of the tenants displaced under the Ellis Act are long-term tenants. Ellis Act evictions disproportionately impact senior and disabled residents. Rent Board data reviewed in preparation of this report reveals that senior/disability claims were filed in 71% of the properties withdrawn under the Ellis Act.

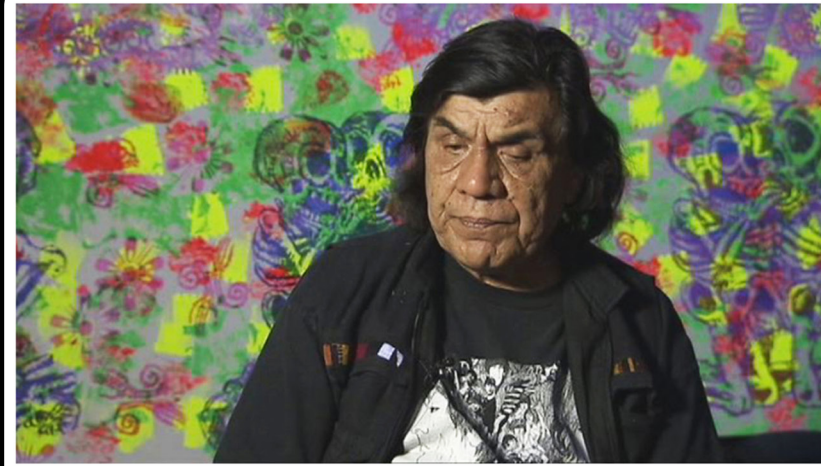
Tenant advocates have highlighted individual stories of very long-term senior and disabled tenants, a few of which are set forth here.

Matthew Miller bought 1506-1510 Jackson Street for \$1.2 million in January 2012. Miller had used the Ellis Act before on a different property. Within four months, he began trying to displace the longtime residents at 1506-1510 Jackson. 1508-A Jackson Street was the home for Chinese immigrants Gum Gee Lee and her husband, 80-year-old Poon Heung Lee since 1979. They raised seven children there,

including their 48-year-old disabled daughter. As Gum Gee Lee, 73, explained, "We raised our family here and we paid rent for more than 30 years. This new landlord knew we lived here when he bought the building. But he did not plan to keep us. He started to evict all of the tenants right away." The family lives on Social Security checks and explained that it would be nearly impossible to find anything they could afford. They wanted to stay near Chinatown where there are social support services for their daughter's disability. Before being forced out, Gum Gee Lee explained, "We thought we'd live here until we passed away, And now this. It is all so sad."



Photo by Mike Koomzin, the San Francisco Examiner



Sergio Iantorno is currently evicting the well-known artist Rene Yañez from his home of 35 years in the Mission District at 380 San Jose St. Yañez is the founder and curator of the Mission Cultural Center and Galería de la Raza, amongst other Latino arts organizations and projects. According to his son, who lives at the property, "With elderly people like them, with limited income, this essentially makes them homeless.... They were kind of at peace and mentally prepared that this would be their home when they passed away, being in the community where they've put so much into. That's the toughest thing for me: trying to find new spots for them to pass away in."

EVICTIONS RISING IN SAN FRANCISCO

San Francisco experienced a sharp rise in Ellis Act evictions in 2013. The number of units rose from 66 in 2011, to 109 in 2012, and to 252 in 2013.

The rise in Ellis Act evictions appears to be driven by two forces. First, booming property values have increased the profit opportunity for investors that convert rent controlled units to tenancies-in-common which can be sold much like condominiums. Second, after a period of tight lending, banks are providing more favorable terms for so-called "fractionalized loans," a shift that has made TIC interests more marketable.



Mary Elizabeth Phillips is scheduled to be evicted by Urban Green Investments through the 55 Dolores Street LLC in April, 2014, the month that she will be turning 98. She has nowhere else to go. As Mary says, "This has been my home for over 40 years and I don't want to leave. . . I am just too old." Being displaced from her home means being displaced from the city that she has lived in for 76 years because rent in San Francisco is too high. It also means being cut off from social support that she has developed over the course of a lifetime.

OWNERSHIP CHANGE DATA

Tenants Together and the Anti-Eviction Mapping Project undertook a detailed analysis of rent board data and property ownership records. The results were startling: in 2013, 60% of Ellis Act evictions¹ were by owners who had owned the property for less than one year. The majority of those were during the first six months of ownership. Likewise, 79% of Ellis Act evictions were by owners within their first five years of ownership of the property. Only 21% of the evictions were by long-time property owners. The cumulative data from 2009-2013 was similar, with 51% of Ellis Act evictions filed within less than one year of ownership and 78% filed within the first five years.

The following chart sets forth the combined data for 2009-2013:

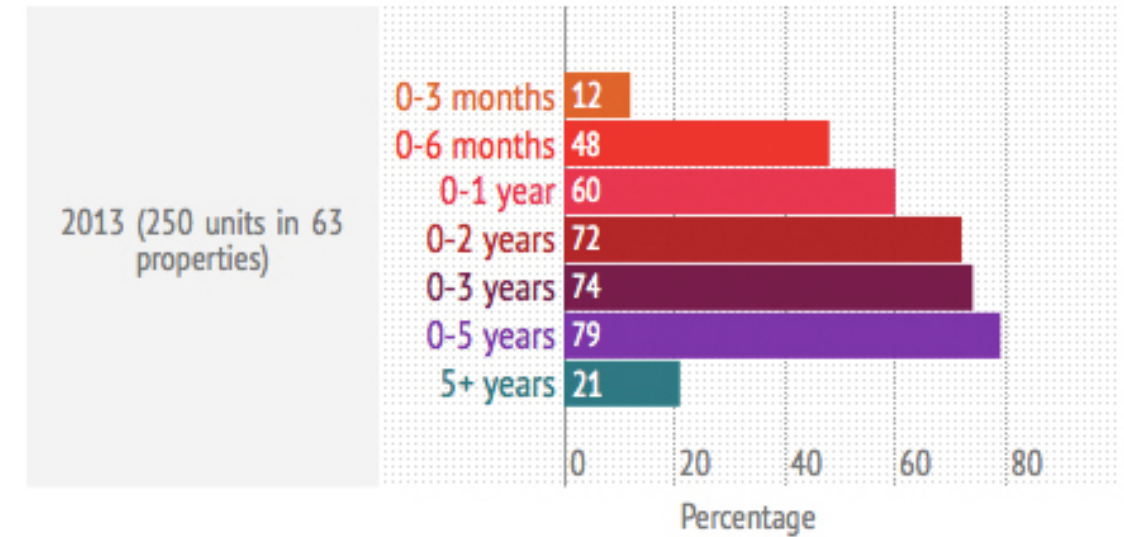
Length of Ownership before Invoking Ellis Act	# of Units	PERCENTAGE BY Specific Range		PERCENTAGE BY CUMULATIVE RANGE
5+	126	22%	5+	22%
3-5 Years	42	7%	0-5 years	78%
2-3 Years	30	5%	0-3 years	71%
1-2 Years	82	14%	0-2 years	66%
6 months - 1 Year	57	10%	0-1 year	51%
3-6 months	136	24%	0-6 months	42%
0-3 months	104	18%	0-3 months	18%
Total Units Ellised	577	100%		

Looking at the ownership length by building, rather than by unit, the same pattern emerges. From 2009-2013, owners of less than one-year accounted for 43% of the buildings on which the Ellis Act was invoked, while owners of less than five-years accounted for 69% of Ellised buildings.

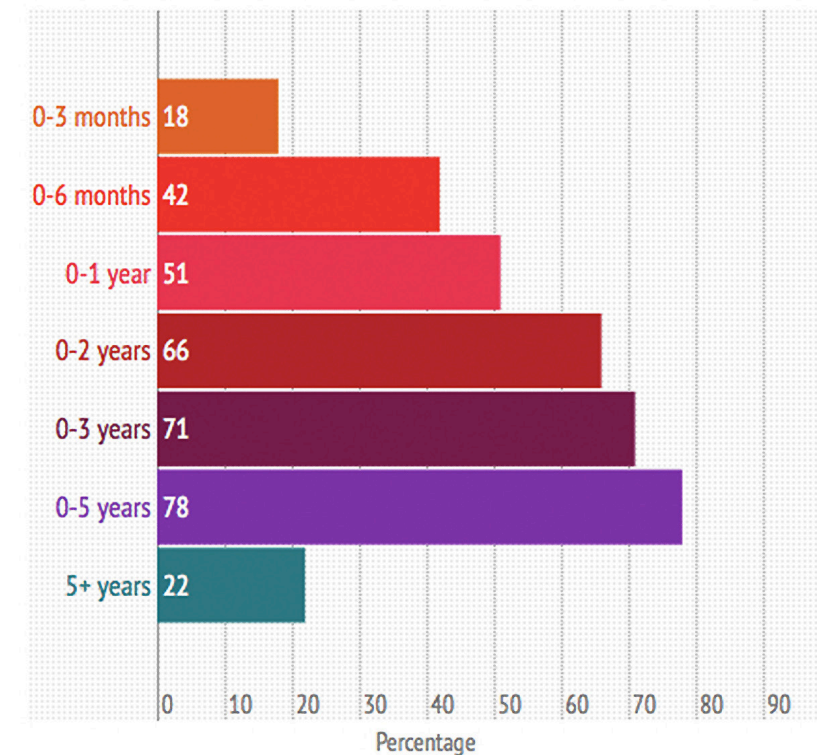
Length of Ownership before Invoking Ellis Act	# build-ings	PERCENTAGE BY Specific Range		PERCENTAGE BY CUMULATIVE RANGE
5+	55	31%	5+	31%
3-5 Years	16	9%	0-5 years	69%
2-3 Years	9	5%	0-3 years	60%
1-2 Years	21	12%	0-2 years	55%
6 months - 1 Year	17	10%	0-1 year	43%
3-6 months	26	15%	0-6 months	34%
0-3 months	34	19%	0-3 months	19%
Total Buildings Ellised	178	100%		

1 This is a de-duplicated figure, meaning that re-filings on the same property were excluded.

Percentage of Ellis Evictions by Ownership Length, 2013



Percentage of Ellis Evictions by Ownership Length, 2009-2013



SERIAL USE OF ELLIS ACT

In reviewing Ellis Act records, a clear trend emerged. Some of the same names appeared on multiple Ellis Act filings. Further research into corporate owners revealed that some individuals were involved in Ellis Act evictions through multiple corporate entities.

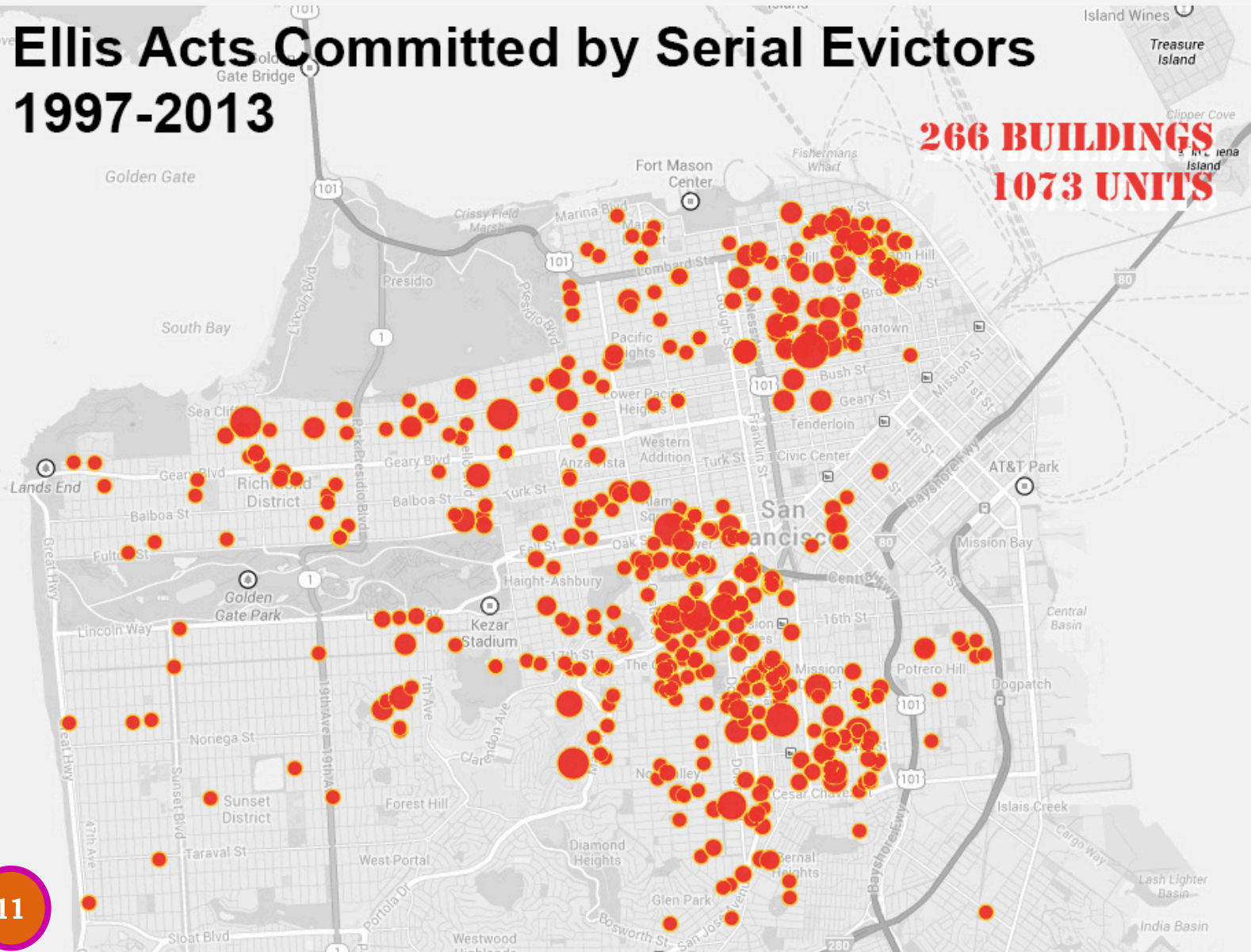
An exhaustive review of all records since 1997 revealed the following: 30% of units were Ellised by an owner that has used the Ellis Act on another property. These are referred to as "Serial Evictors."

Some of these Serial Evictors have used the Act to evict tenants from many properties. For example, Kaushik Dattani has invoked the Ellis Act on 25 units and Urban Green Investments has invoked the Ellis act on 28 units.

Buildings Units

Ellis Petitions (De-duplicated) 1997-2013:	1251	3610
Number by Serial Evictors	266	1073
Percentage by Serial Evictors	21%	30%

Ellis Acts Committed by Serial Evictors 1997-2013



SPECULATOR PROFILES

SERGIO IANTORNO

Sergio Castellucci Iantorno is the owner of Peninsula Realty, LLC, Realty West, LLC, and Golden Properties, LLC, and San Francisco Developers, LLC, and is affiliated with Vanguard Real Estate and DBA Realty West.

He is currently evicting 19 units through the Ellis Act:

630-636A Guerrero St. (6 units) - Ellised on 12/30/2013 by Peninsula Realty, LLC. 19 people will be evicted. Two seniors live there, as well as many family members. One tenant has lived there since 1978.

1353-57 Folsom St. (3 units) - Ellised on 12/30/2013 by Golden Properties, LLC. 17 people will be evicted, including two large multi-generational families. The building contains a 72 year old tenant and a tenant who has lived there since 1979.

642-646 Guerrero St. (4 units) - Ellised on 12/30/2013 by Golden Properties, LLC, where 5 people will be evicted. One has resided there since 1966, for 47 years.

380 San Jose (4 units) - Ellised on 7/2013 by Golden Properties, LLC. Home of artists Rene Yañez, Yolanda Lopez, and Rio Yañez. Petition L131068.

70-72 Belcher St (2 units) Ellised on 7/2013 by Golden Properties, LLC. Petition L13T075.

UGI is a San Francisco Multi-family portfolio of over 385 units. In 2012 they purchased a 130 unit multi-family portfolio and 40 TIC units, and picked up a 12-building multifamily portfolio for \$38 Million cash from Prana Investments.

URBAN GREEN INVESTMENTS

Using dozens of LLCs, UGI and its CEO have invoked the Ellis Act on 28 units:

1070 Post St. (6 units) - Ellised on 1/31/13 by 1070 Post Street, LLC. Petition L130141.

49-53 Guerrero St. (3 units) - Ellised on 5/17/13 by 49 Guerrero Street, LLC. Petition: L130760.

55 Dolores St. (5 units) Ellised on 4/8/2013 by 55 Dolores Street, LLC. Petition L130542.

566-576 Lombard St. (14 units) - Ellised 2/4/13 by 566 Lombard Sreet, LLC. Petition L130157.

KAUSHIK DATTANI

Kaushik "Ken" Mulji Dattani is affiliated with numerous LLCs and corporations, including: Diva Investments - Managing Member; Dattani & Company - Principal; Kapu Properties, LLC - Member; Haveli Inc. - President; 363 Valencia, LLC - Managing Member; CA1INVESTMENT Company - Member.

Dattani has used the Ellis Act on 25 units, including:

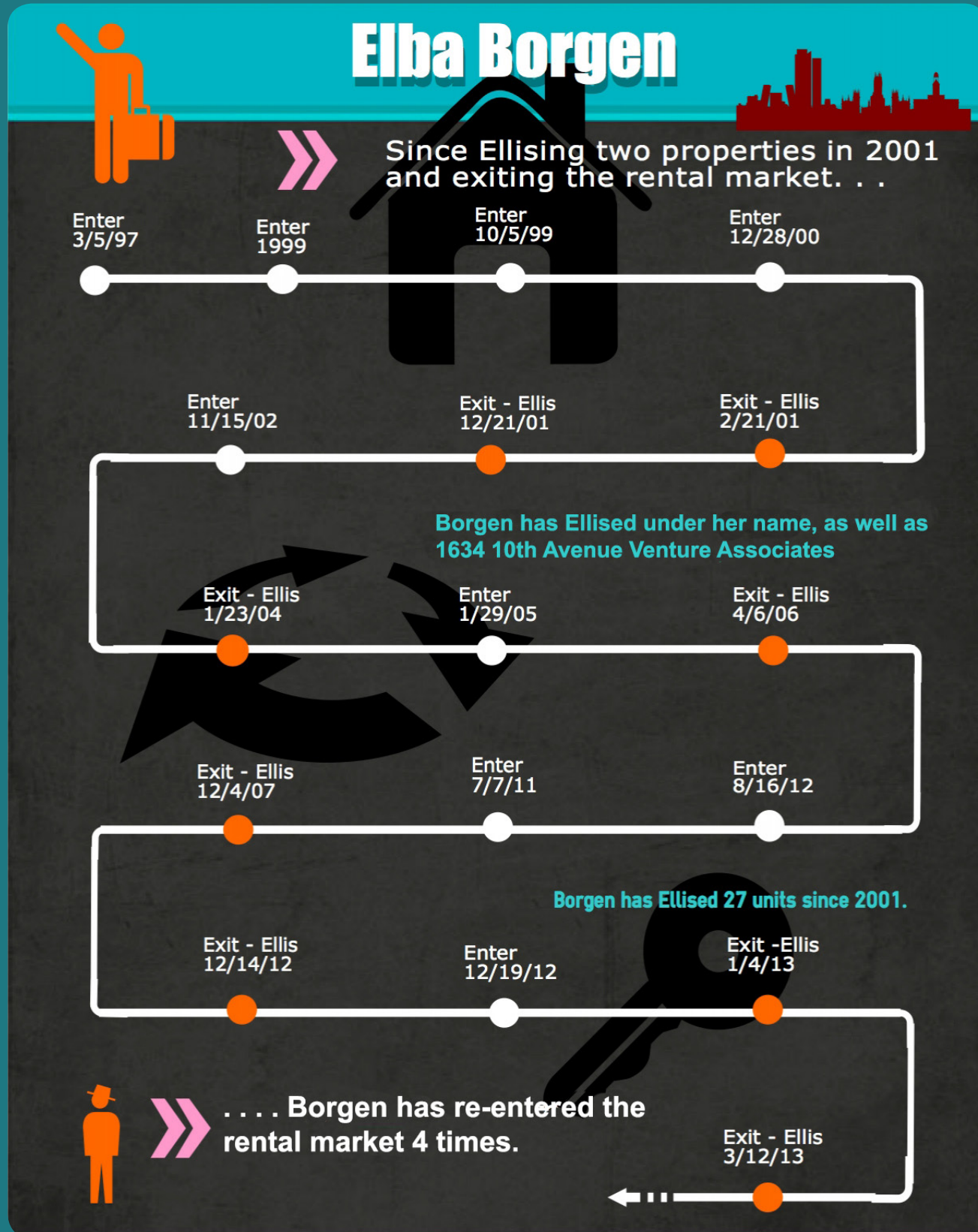
3305-3321 20th Street (9 units) - Ellised on 8/16/2013, by Kaushik Mulji Dattani, as Trustee of the M. Dattani Credit. Petition L131379,

3465 - 3469 19th Street (3 units) - Ellised on 12/5/2007, by 363 Valencia, LLC. Petition L0719642007.

3224 - 3248 22nd Street (13 units) - Ellised on 10/10/2007, by Kaushik Dattani, as Trustee of the M. Dattani Credit Trust. Petition L071559

A REVOLVING DOOR OF EVICTIONS

Some speculators have entered, exited, re-entered, and re-exited the rental business, evicting tenants from multiple buildings. These speculators clearly have no plan to exit the rental business but are simply using the Ellis Act to convert the buildings to other uses and then acquire new rental properties for the same purpose. The following timeline tracks the multiple entries into and exits from the rental market of one such speculator.



RECOMMENDATIONS

The data reveals extensive displacement due to the Ellis Act, with a trend of use of the Ellis Act by recent purchasers and by repeat evictors.

Speculators are exploiting a loophole in the Act that allows them to buy a building and then immediately “exit the rental business” through evictions of tenants. The stories are disturbing, with seniors and families losing their long-term homes.

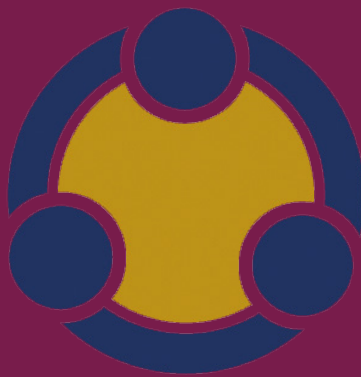
The negative consequences of the Ellis Act are clear, including: large scale displacement of tenants. To date, no research or reports have documented what, if any, societal benefit has come from affording property owners a statutory right to exit the rental housing business. According to a website recently launched by the California Apartment Association to fight Ellis Act reform, the Act is needed to allow landlords to “exit the rental market to avoid bankruptcy,”¹ but no evidence is presented to show this is how the Ellis Act is used. If such evidence were presented, one possible policy reform would be to limit use of the Ellis Act to situations where an owner shows that the Act is needed for the purpose of avoiding bankruptcy. Real estate speculators would likely not be able to meet such a standard.

Two targeted reforms would ensure that use of the Ellis Act is confined to long-term landlords, not real estate speculators who get into the rental business just to get out of it through mass evictions. First, the Ellis Act should not be available to new owners of property for a certain number of years. By imposing a period of time after ownership during which the Ellis Act cannot be used, such a reform would deter speculator abuse of the Act while preserving the statutory right of long-term landlords who seek to get out of the rental business. The period of time between purchase and eviction would need to be long enough to provide a disincentive to prevent speculators from simply buying properties and waiting out the time period. Such a reform would also need to prohibit prospective buyers from acting in concert with current landlords to circumvent the law. Moreover, to implement these restrictions, there would need to be additional transparency regarding the persons and entities with ownership interests in these properties.

Second, serial use of the Ellis Act on multiple properties by the same owners is problematic and should be prohibited. At minimum, an owner should be prohibited from evicting under the Ellis Act if the owner acquired the subject property after previously invoking the Act. Once someone evicts to exit the rental housing business, there is no compelling policy reason to allow them to re-enter the rental business just to evict again under the Ellis Act on another property.

These policy changes would limit use of the Ellis Act to its intended beneficiaries: landlords.

¹ California Apartment Association & San Francisco Apartment Association website: www.preservetheellisact.org.



TENANTS TOGETHER
California's Statewide Organization for Renters' Rights

415.495.8100
www.tenantstogether.org