

# SIRKINLAW APC

388 Market Street • Suite 1300 • San Francisco • California • 94111 • 415.738.8545(v) • 707.922.8641(f)  
dasirkin@earthlink.net • www.andysirkin.com

July 17, 2015

Members of the San Francisco Board of Supervisors  
c/o The Clerk of the Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

RE: 158-162 Linda Street; Block 3597, Lot 49; 6-Unit ECP Conversion

Distinguished Board Members:

The above-referenced property was the subject of a condominium conversion application submitted under the Expedited Conversion Program or “ECP” (SF Subdivision Code §1396.4). The Department of Public Works (“DPW”) found the conversion to be incomplete, and the building owners are appealing under Government Code §65943(c).

The property at 158 Linda contains six units, each of which has been owner-occupied continuously since October 2008. Due to various family and work circumstances, only one of the original 2008 owners remains. The other five current owners moved in on various dates between January 2010 and April 2014. There have been no interruptions in occupancy in any of the six units; each time an owner moved out, a replacement owner moved in the same or the following day.

DPW explained its finding that the conversion application was incomplete by stating: “The allowance to transfer years from one owner-occupant to the next can only occur for one unit on a one-time basis”. The applicants disagree with this interpretation of the ECP law. They contend that there is no limitation on the transfer of years from one owner to another so long as each owner-occupancy is continuous and uninterrupted, meaning there is no gap between when an owner moves out and when a replacement owner moves in.

Your interpretation of this provision of the ECP law will affect many owners, particularly in 5-6 unit buildings. These buildings must satisfy six-year owner occupancy requirements in at least three units, and will not be eligible to convert when the conversion lottery resumes. If these buildings are disqualified because they have had owner-occupancy changeovers, they will never be eligible for conversion.

Because so many people are affected, the issue of owner-occupants replacing other owner-occupants became the subject of discussion and debate among the “working group” negotiating the ECP law. In early May, 2013, the discussion led to a compromise amendment introduced by Supervisor David Chiu in the Land Use Committee hearing on May 20, 2013. In the notes he submitted with his proposed amendments, he wrote that the proposed owner tacking amendment “allows existing TIC owners waiting to apply for the expedited conversion process to transfer ownership of their units without losing eligibility for conversions.”

During the May 20 Land Use Committee hearing, several of the speakers made similar comments and observations:

Supervisor Scott Weiner: “This amendment as I understand it allows transfers of ownership for that pool of years 3 to 6 TIC conversions. In other words the owner occupancy can be comprised of a succession of ownership and I think that’s a very positive amendment and I’m appreciative of it.”

Supervisor Jane Kim: “It does allow existing TIC owners waiting to apply for the expedited conversion program to transfer ownership of their units without losing eligibility for conversion.”

Ben Fujioka, Chinatown Community Development Center: “We think that in particular the idea of allowing transfers of ownership within the context of the six or seven year conversion process makes sense given that these are units that have already been converted, they are now ownership units, and allowing those transfers will not fuel further speculation.”

Significantly, none of the legislative notes or hearing testimony mentions allowing only one changeover per building. In fact, such a limitation would undermine the goal that Supervisor Chiu cites in his legislative notes, the goal mentioned as the basis for support of the amendment expressed by the Supervisors and community members.

More importantly, the language of the amendment, which was later included verbatim in the ECP law, does not impose a one-change-per-building limit on owner tacking. The text has two sentences on the issue:

Sentence #1: “For applications for conversion pursuant to Subsections (3)-(7) only, a unit that is “occupied continuously” shall be defined as a unit occupied continuously by an owner of record for the six year period without an interruption of occupancy and so long as the applicant owner(s) occupied the subject unit as his/her principal place of residence for no less than one year prior to the time of application.” (Emphasis supplied.)

Sentence #2: “Notwithstanding the occupancy requirements set forth above, each building may have one unit where there is an interruption in occupancy for no more than a three month period that is incident to the sale or transfer to a subsequent owner of record who occupied the same unit.” (Emphasis supplied.)

If the intention were to allow only one changeover, there would be no need to distinguish between “an owner” and “the applicant owner” in Sentence #1. That sentence could simply have said that the applicant owner needs to live in the unit for six years. The second sentence could then provide the exception to that general rule, allowing one changeover in the unit.

The most natural and logical interpretation of the distinction between “owner” and “applicant owner” in Sentence #1 is that there is intended to be a difference between changeovers without an interruption in occupancy, and changeovers with an interruption. The former, changeovers without an interruption, are not limited to one per building; the only limitation is that the last owner occupant(s) must be live in the unit(s) for at least one year prior to application. It is only changes with an interruption in owner-occupancy that are subject to the one-per-building limit.

In short, the applicants believe that DPW’s interpretation represents an unnatural reading of the ECP law, and one that would undermine the intent of the Supervisors who drafted and approved the owner tacking amendment. Moreover, DPW’s interpretation would severely impact a large number of owners, while benefitting no one (since the affected units have already been off of the rental market for many years). We therefore respectfully request that the Board overturn DPW’s finding of incompleteness, and find that the application is complete as submitted.

Thank you for your consideration of this matter.

Respectfully,



D. Andrew Sirkin  
SirkinLaw APC  
Applicant’s Attorney