

REVISED LEGISLATIVE DIGEST
(Substituted, 5/16/2017)

[Administrative Code - Owner Move-In Reporting Requirements]

Ordinance amending the Administrative Code to require a landlord seeking to recover possession of a rental unit based on an owner move-in (“OMI”) or relative move-in (“RMI”) to provide a declaration under penalty of perjury stating that the landlord intends to occupy the unit for use as the principal place of residence of the landlord or the landlord’s relative for at least 36 continuous months; require a landlord seeking to recover possession of a rental unit based on an OMI or RMI to provide the tenant with a form prepared by the Rent Board to be used to advise the Rent Board of any change in address; require a landlord to file annual documentation with the Rent Board for three years after an OMI or RMI showing whether the landlord or relative is occupying the unit as his or her principal place of residence; require the Rent Board to annually notify the unit occupant of the maximum rent for the unit for three years after an OMI or RMI; and extend the statute of limitations for wrongful eviction claims based on an unlawful OMI or RMI from one year to three years.

Existing Law

The City’s Residential Rent Stabilization and Arbitration Ordinance allows a landlord to recover possession of a rental unit if the landlord has a good faith intent to occupy the rental unit as its principal residence for a period of at least 36 continuous months (an “Owner Move-In,” or “OMI”). Under certain conditions, a landlord can also recover a rental unit based on the landlord’s good faith intent to use the unit as the principal residence of the landlord’s family members for a period of at least 36 continuous months (a “Relative Move-In,” or “RMI”).

A landlord formally initiates the OMI or RMI process by serving the tenant a notice to vacate, and must then file a copy of the notice to vacate with the Rent Board. This filing triggers the Rent Board’s recording of a three-year notice of constraints on the unit (among other things). If a landlord offers a unit for rent during the three-year period following service of a notice to vacate, the landlord must offer the unit in good faith at a rent not greater than the rent the original tenant would have been required to pay had the original tenant remained in continuous occupancy of the unit.

If the OMI or RMI leads to an unlawful detainer action, it falls to a court to determine issues such as whether the landlord served the notice to vacate, and whether the landlord satisfies the underlying requirement of having a good faith intent to occupy the unit as the landlord or the relative’s principal residence for a period of 36 continuous months.

Landlords are not currently required to report to the Rent Board regarding the use of a rental unit following an OMI or RMI. A tenant who has been evicted due to an OMI or RMI may sue

for wrongful eviction if the tenant comes to believe that the eviction was unlawful. A wrongful eviction action must be brought within one year after the recovery of possession of the unit.

Amendments to Current Law

The legislation would require the notice to vacate for an OMI or RMI to include a form prepared by the Rent Board that the tenant can use to advise the Rent Board of any change in address, and a declaration executed by the landlord under penalty of perjury stating that the landlord intends to recover possession of the unit in good faith for use as the principal residence of the landlord or the landlord's relative for a period of at least 36 continuous months.

The legislation would create a rebuttable presumption that the landlord did not perform the OMI or RMI in good faith, if (1) the landlord has refused to file the notice to vacate with the Rent Board; (2) the landlord or relative did not move into the unit within three months after the recovery of possession and then occupy the unit as their principal residence for at least 36 continuous months; or (3) the landlord within three years after service of the notice rented the unit to a new tenant at a rent greater than what the original tenant would have been required to pay had the original tenant remained in the unit. These rebuttable presumptions merely describe the initial burden of producing evidence in unlawful detainer and wrongful eviction actions. They are preliminary assumptions intended to facilitate the determination of whether a landlord has met the underlying requirement of good faith. They do not alter the burden of proof in such cases. Thus, if a landlord introduced evidence that would support a finding of good faith, the trier of fact would have to determine whether there was good faith based on all the evidence and without regard to the initial presumption.

The legislation would also require a landlord to file an annual "statement of occupancy" with the Rent Board for three years after recovery of possession for an OMI or RMI. The landlord would need to execute the statement of occupancy under penalty of perjury and identify whether the unit was occupied as the principal residence of the landlord or relative, and if so, also provide supporting documentation. If the unit was not occupied by the landlord or relative, the statement of occupancy would need to disclose the current rent for the unit. A landlord's failure to file a statement of occupancy (and supporting documentation, if applicable) would create a rebuttable presumption of a lack of good faith, similar to the presumption discussed above.

The Rent Board would be required to send the original tenant a copy of each statement of occupancy filing. The Rent Board would also be required to send the new unit occupant a notice stating the maximum rent for the unit, for three years after the OMI or RMI.

Finally, the legislation would extend the statute of limitations for wrongful eviction actions following an OMI or RMI to three years after the landlord recovered possession of the unit.