

REVISED LEGISLATIVE DIGEST

(6/26/2017, Amended in Committee)

[Administrative Code - Owner Move-In Reporting Requirements]

Ordinance amending the Administrative Code regarding owner move-in and relative move-in (“OMI”) evictions to require a landlord seeking to recover possession of a unit for an OMI 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 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; clarify the evidentiary standard for finding that an OMI was not performed in good faith; require a landlord to file documentation with the Rent Board regarding the status of an OMI, with a penalty for not filing such documentation, and requiring the Rent Board to transmit a random sampling of such documentation to the District Attorney; extend from three to five years the time period after an OMI during which a landlord who intends to re-rent the unit must first offer the unit to the displaced tenant; provide that a landlord who charges above the maximum allowable rent during the five-year period after an OMI is guilty of a misdemeanor; require the Rent Board to annually notify the unit occupant of the maximum rent for the unit for five years after an OMI, and authorize the occupant to sue for three times any excess rent charged; extend the statute of limitations for wrongful eviction claims based on an unlawful OMI from one year to five years; and making clarifying changes.

Existing Law

The City’s Residential Rent Stabilization and Arbitration Ordinance allows a landlord to perform an owner move-in (“OMI”) to recover possession of a rental unit if the landlord has a good faith intent to occupy the rental unit as his or her principal residence for a period of at least 36 continuous months. (A landlord can also perform an OMI on behalf of a relative, under certain conditions.)

A landlord formally initiates the OMI eviction process by serving the tenant a notice to vacate, and must then file a copy of the notice to vacate with the Rent Board. The Rent Board is required on a monthly basis to compile a list at random of 10 percent of all OMI notices filed, and transmit that list to the District Attorney for investigation. The Rent Board must also record a notice of constraints on a unit whose occupant received an OMI notice, within 30 days of the notice’s effective date. If the tenant vacates the unit and the landlord then offers the unit for rent during the three-year period after service of the OMI notice, the landlord must first offer the unit to the original tenant. The landlord may not charge the original tenant (or any other tenant) a rent higher than what the original tenant would have been required to pay had the original tenant remained in the unit, for a period of five years after service of the notice. See Admin. Code § 37.3(f)(1).

If the OMI 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. A tenant who has been evicted due to an OMI may sue for wrongful eviction if the tenant comes to believe that the eviction was unlawful. A wrongful eviction action is subject to a one-year statute of limitations.

Amendments to Current Law

The proposed ordinance would require a landlord to attach to an OMI notice a form prepared by the Rent Board that the tenant can use to advise the Rent Board of any change in address, and to include in the notice 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 ordinance would also (1) clarify that existing law limits the initial rent that a landlord may charge a new tenant for a period of five years after service of an OMI notice; and (2) extend from three years to five years the time period during which a landlord who intends to re-rent the unit must first offer the unit to the displaced tenant.

The proposed ordinance would create a reporting obligation by requiring a landlord to file a "statement of occupancy" under penalty of perjury with the Rent Board. Initially, the landlord would only have to disclose whether he or she was still endeavoring to recover possession of the unit. The first disclosure would be due within 90 days after service of the OMI notice and an update would be due every 90 days thereafter. Once a landlord reported that he or she had recovered possession of the unit, updates would be due only once a year, but would have to include additional information regarding the date of recovery of possession, the date of move-in (or reasons for not moving in), the rent charged if any, and such other information and documentation as required by the Rent Board. The Rent Board would be required to send a copy of the statement of occupancy to the displaced tenant; transmit a random sampling of statements of occupancy to the District Attorney on a monthly basis; and assess a \$250 administrative penalty on any landlord for a first failure to file a required statement of occupancy, a \$500 administrative penalty for a second failure, and a \$1,000 administrative penalty for every subsequent failure. The Rent Board would also be required to send the new unit occupant an annual notice stating the maximum rent for the unit, for five years after the OMI.

The proposed ordinance would also clarify what kind of evidence is relevant towards proving that the landlord did not perform the OMI in good faith. Such evidence could include, but would not be limited to, the following: (1) the landlord failed to file the OMI notice 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; (3) the landlord or relative lack a legitimate, bona fide reason for not moving in within three months after recovery of possession and/or maintaining a principal residence in the unit for 36 continuous months; (4) the landlord did not file a statement of occupancy with the Rent Board; (5) the landlord charged excessive rent during the five-year period following the service of the OMI notice; or (6) such other factors as a court or the Rent Board may deem relevant.

The proposed ordinance would extend the statute of limitations for wrongful eviction actions following an OMI to five years after either (1) the date the landlord files the first statement of occupancy with the Rent Board or (2) three months after the landlord recovers possession, whichever is earlier.

The proposed ordinance would strengthen existing law regarding misdemeanor prosecutions by expressly authorizing the District Attorney to sue landlords who charged an excess rent during the five-year period following an OMI notice when the initial rent is restricted. A tenant who was charged excess rent during the five-year period could also sue the landlord for treble damages.

Finally, the proposed ordinance deletes portions of Section 37.10A that were invalidated by the decision of the Court of Appeal in *Baba v. Bd. of Sup'rs of City & County of San Francisco* (2004) 124 Cal. App. 4th 504.

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