

My Landlord Is Selling My Building

Landlord/Tenant Law and Evictions



Dear ALRP:

I have been living in the same Victorian flat in San Francisco for over 20 years. My landlord is retiring to Palm Springs, and has decided to put the building up for sale. I've had a great relationship with my landlord, but I don't know what's going to happen with the new owner. Real estate brokers have started showing my home to potential buyers, and the whole experience is quite unsettling.

What happens when the building gets sold? Does it mean that I will have to leave? I've heard that many tenants get evicted because the landlord sells the property to a new buyer – something called the “Ellis Act.” As a person living with AIDS on a fixed income, I would have to leave the city if I had to move out. San Francisco is my home, and I don't want to leave if I don't have to.

- Concerned in the Castro

Dear Concerned:

Just because your landlord is selling the building does not mean that you will have to move if you don't want to – or even that your tenancy has to change in any substantial form. In San Francisco, when a building gets sold, the new owner “steps into the shoes” of the old owner. Any agreement (oral or written) that you had with your landlord will technically become binding on the new owner.

Generally speaking, you will not have to sign a new lease – even if the new landlord asks you to. He or she inherited you as a tenant, and cannot try to impose new rules in your lease without your consent. If a new lease is asked for, it must be substantially the same as the existing one. If you are covered by the Rent Ordinance,¹ the new landlord also cannot raise your rent beyond San Francisco's annual allowable increases. However, if your old landlord didn't raise the rent for a number of years, the new owner might give you a “banked” rent increase – which means that they could add up all the allowable rent increases that the old landlord never imposed. If you get such a rent increase notice, call the San Francisco Rent Board at 252-4600 to make sure that it's legal.

What is an “Estoppel Certificate”? They Want Me to Fill One Out

While the building is being sold, your landlord or the realtor may ask you to fill out what's called an “Estoppel Certificate” – a form that they will use to inform potential buyers about who lives

¹ For information on units covered, see San Francisco Rent Ordinance Chapter 37 § 1, available at <http://www.sfrb.org/index.aspx?page=1240>; See also http://www.hrcsf.org/rent_board.html.

there and what their rights are. *Unless your current lease requires you to do so, you are under no legal obligation to fill one out* – but, it may be a useful means of informing potential buyers about what your rights are under your current rental agreement. For example, if your lease said “no subletting” but your landlord always allowed you to sublet anyway, you should include that in the estoppel certificate to preserve that practice. Or if you had an oral agreement with your landlord to use the backyard or garage, you should note that as well. If the form asks if you are a “protected” tenant (i.e., elderly, disabled or catastrophically ill), you must answer this in order to preserve your rights later. As a tenant living with AIDS, you may qualify as a “disabled” or “catastrophically ill” tenant who has additional protections against certain types of evictions. It is in your best interest to let them know this at this early stage, or you may lose the right to claim it later.

Can the New Owner Evict Me?

Under San Francisco’s Rent Control and Just Cause for Eviction Ordinance, you cannot be evicted unless the new owner has a specified legal reason to evict you. Mere change of ownership is not one of them. But there are two common ways that a new owner who buys the building could try to evict you legally – an owner move-in eviction (OMI) or the Ellis Act. Each approach has various protections for tenants that might protect you – or at least make it more difficult for them to evict you.

Owner Move-in Evictions

The new owner may try to evict you because he or she says that they want to move into your apartment, or move one of his or her relatives. But the owner’s relative can only be moved into your unit if the owner already lives (or plans to move into) the building. This must be done in “good faith,” which means that the owner must have an honest intent to move into your apartment. This can be contested at trial, if you suspect that the owner is not being sincere about their motivation. To do an owner move-in eviction, the new owner must give you a formal 30-Day Notice. The owner or relative must then move into your apartment within 3 months after the eviction, and live there for at least 3 years. Otherwise, it will be presumed to have been done in “bad faith,” and you could sue for damages. The new owner can only evict you if they do not own any comparable vacant unit, and only one owner move-in eviction can be done per building.

Moreover, you may be a “protected” tenant who is exempt from owner move-in evictions and cannot be evicted for this purpose if: (1) you are over 60 years old and have lived in the apartment for over 10 years, (2) you are disabled and have lived in the apartment for over 10 years, or (3) you are catastrophically ill and have lived in the apartment for over 5 years – but you must have your doctor certify that you have a “life threatening illness,” such as AIDS. However, this exemption does not apply if the new owner or their relative is elderly, disabled or catastrophically ill.

What About the Ellis Act?

The new owner may try to evict you under the Ellis Act – which is a state law that allows landlords to evict an entire building of tenants so that the owner can “go out of the rental business.” Most Ellis Act evictions are done by real estate speculators who buy the building with

the intent to renovate and put it back up for sale. Having a building free of tenants can significantly increase its value. While you probably are not immune from the danger of an Ellis Act eviction, there are various protections in place that could discourage a buyer from trying to evict you in this way.

In an Ellis Act eviction, the owner must evict all the tenants from the building – not just you. The only exception to this is if the property owner has four or more units and two or more buildings. In that case, the landlord has the option to evict all the tenants in one building but not the other. The Ellis Act requires a longer notice period than most type of evictions, with the minimum set at 120 days (four months) from the date the notice was served on the tenant. Each tenant is also entitled to receive at least \$ 5,210.91 in relocation assistance – with a maximum of \$ 15,632.69 per household. There are additional protections if a tenant is over 62 years old or disabled (which can include AIDS). In that case, a tenant has at least a one year notice period and receives an additional \$3,473.93 in relocation assistance. The minimum amount required for relocation assistance is subject to inflation—contact the Rent Board for the amounts required for notices served after February of 2014.

If the owner manages to evict you under the Ellis Act, there are several things that they—as well as any future owners of that property—are restricted from doing with the property afterwards. While this may be small comfort for a tenant who has already lost their home and left town, informing your new landlord about these legal restrictions can make them think twice about trying to kick you out. They may decide not to go forward with the eviction, or they might negotiate a better settlement or move-out deal with you.

First, the landlord is restricted in renting out units that were subject to the Ellis Act. For two years after, the landlord is not allowed to place the unit on the rental market. For five years after, the landlord cannot legally collect more than the rent charged at your old rent-controlled unit—although this can also include rent increases that would have been otherwise allowed. Finally, for ten years after an Ellis Act eviction, if he or she wants to once again rent out the unit, the landlord must first offer you back the apartment at the same rent. To best protect your right to re-rent your former unit, inform your landlord and the Rent Board of your intent to re-rent within 30 days and update both with your new address every time you move.

Second, whoever buys your apartment may never be able to convert it into a condominium. In May of 2010, the San Francisco Board of Supervisors passed legislation that prohibits condo conversions in buildings that have evicted even one elderly, disabled or catastrophically ill tenant under the Ellis Act. A building that has evicted two or more of any tenant—protected or not—is further prohibited from converting his or her building into a condo. If the new owner is a real estate speculator who is hoping to cash-in on flipping your unit after condo conversion, this will go a long way in preventing such schemes.

Defending against an Ellis Act eviction is difficult, but possible. Since Ellis evictions have a very strict set of procedures which must be followed in order for it to be valid, procedural defenses are very effective. Other defenses, such as retaliation, discrimination, and “bad faith” arguments

are possible, but very difficult to successfully argue. If you are served with any notice, you should seek the advice of a legal professional immediately.

This article is meant to give you general information about what could happen when your building gets sold and does not cover all aspects of the Ellis Act or owner move-in evictions. Also, these laws change frequently, so be sure to contact a legal professional if you have any questions. You can also get more information from the San Francisco Rent Board at (415) 252-4600 or visit their website at <http://www.sfgov.org/rentboard>.

This Legal Q&A Guide was last revised in April 2013. It is intended to provide general legal information to people living with HIV/AIDS in California. However, because laws change frequently ALRP cannot ensure the complete accuracy of the information included. Please call ALRP at (415) 701-1100 to consult with an ALRP attorney about your legal rights in your particular situation.