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FAQs *(frequently asked questions)*

Landlord-Tenant Issues in San Francisco

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This article is provided as a resource for understanding the changes which are taking place in San Francisco's real estate community, and summarizes those changes as they are understood on the publication date. Updated versions of this article may appear on the firm's website at www.g3mh.com.

Extension of Eviction Control to Most San Francisco Rental Units. Effective January 20, 2020, the longstanding "new construction" exemption from the San Francisco Rent Ordinance – which categorically exempted housing units constructed after June 13, 1979 – has been eliminated. Accordingly, most housing in San Francisco, regardless of the year built, is now subject to local eviction control. However, housing built after June 13, 1979, may continue to be exempted from local rent control. Online listings and print advertisements for a rental unit, except for roommate listings, must include the following: **"This unit is a rental unit subject to the San Francisco Rent Ordinance, which limits evictions without just cause, and which states that any waiver by a tenant of their rights under the Rent Ordinance is void as contrary to public policy."**

New Limits on Intermediate Length Occupancy. As of June of 2020, the San Francisco Board of Supervisors has banned the rental of housing units for "Intermediate Length Occupancy" – more than 30 days but less than one year – for ***1–3 unit buildings***, and capped the total number of these units allowable in larger buildings at a ***maximum of 1,000 units*** for the entire City. Rentals for Intermediate Length Occupancy (sometimes referred to as "corporate housing") are also banned for ***all units subject to the SF Rent Ordinance*** (more within).

New Statewide Rent Control. California has enacted a sweeping statewide law creating rent and eviction controls affecting most residential real properties. As a result of this law, many more residential real properties in California will now be subject to a degree of rent control, and will be subject to "just cause" eviction rules, meaning landlords will no longer be able to evict a tenant simply because a fixed term lease has expired. The law will not apply to new housing built within the past 15 years, and a limited number of other types of properties are exempt, including most single-family homes and condominiums. However, for exemptions to apply, tenants must be given advance notice. Consult our companion FAQs, "California Statewide Rent and Eviction Law."

New Rent Increase Notice Rules. California now requires service of a written ***90-day notice*** (instead of a 60-day notice) to increase residential rents by more than ***10%*** within a 12-month period. Service via mail requires an additional five days.

New Risks for Renting Rooms. A recent appellate court decision (*Owens v. City of Oakland*) held that a single-family home with bedrooms rented to separate tenants lost its Costa Hawkins Act exemption from local rent control laws. Owners of single-family homes and condos who rent out rooms or who have roommates will want to give greater attention to their rental agreements to avoid being swept into rent control.

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What Constitutes a "Rental Unit"?

The San Francisco Residential Rent Stabilization and Arbitration Ordinance (the "San Francisco Rent Ordinance") defines a "rental unit" as the residential dwelling used and occupied by a tenant, along with the land, other parts of the building, housing services, privileges, furnishings, and facilities supplied in connection with the tenancy. Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks, patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy (SRO) hotels, supplied in connection with the tenancy, may not be severed from the tenancy by the landlord without "just cause." For a more comprehensive discussion of matters relating to tenant evictions in San Francisco, please consult our companion FAQs on TENANT EVICTIONS IN SAN FRANCISCO. Rental units do not include housing accommodations in hotels occupied by a guest for fewer than 32 continuous days, dwelling units in certain types of non-profit cooperatives, housing accommodations in any hospital, convent, monastery, extended care facility, asylum, state-licensed residential care or adult day health care facility for the elderly or in school-operated dormitories.

What Is Being Rented?

A rental agreement – written or oral – defines the areas that are subject to the tenancy. Most residential rental units are located in multi-unit buildings with shared hallways, stairs, garage or storage spaces, yards, and other common areas. All parties should have a clear understanding, reduced to writing, of the boundaries of the leased premises (including parking and storage areas), and what common areas the tenant may access under specified conditions, as well as areas that are "off limits" except in an emergency, like roofs and fire escapes.

What Are the Advantages of a Written Lease?

A written lease defines the rules, responsibilities, and obligations of both landlord and tenant. A written lease can remove ambiguities that might otherwise become the subject of litigation. Examples include whether assignment/subletting is allowed, the number of occupants permitted, which areas are off-limits to tenants, where notices should be sent, whether smoking is prohibited in or around the premises, what constitutes habitual late payment of rent, etc. The San Francisco Rent Board Rules and Regulations severely limit a landlord's ability to evict a tenant for breaching a unilaterally imposed new term of tenancy to which the tenant did not expressly provide consent; therefore, all tenant responsibilities and prohibitions should be clearly defined at the beginning of the tenancy. Finally, when property owners sell tenant-occupied properties, written leases allow for easier transitions, and reduce disputes between existing tenants and new landlords regarding their respective obligations and responsibilities.

Is My San Francisco Residential Rental Property Subject to Rent Control?

A property is subject to the rent increase limitations of the San Francisco Rent Ordinance if a Certificate of Occupancy for the structure was first issued on or before June 13, 1979. Units in hotels, motels, tourist houses, and rooming houses, where the unit has not been occupied by the same tenant for ***32*** or more continuous days, are ***not*** covered by the San Francisco Rent Ordinance. Units whose rents are regulated by another government authority, such as subsidized housing projects and senior housing may be subject to certain provisions of the Rent Ordinance. Many single-family homes and condominiums are exempt from the rent increase limitations of the San Francisco Rent Ordinance, but are still subject to eviction restrictions (see below). Also, please consult our companion FAQs, "CALIFORNIA STATEWIDE RENT AND EVICTION LAW" about new ***state*** rent and eviction control laws. ***All rental properties*** that are in ***foreclosure*** are subject to limited eviction controls set by the state.

What Are the Effects of SF's Rent Ordinance?

There are two main features of San Francisco Rent Ordinance: Rent increase limitations and eviction restrictions. The San Francisco Rent Ordinance also restricts changes in the terms of a rental agreement once a tenant has moved in.

Rent Increase Limitations. The San Francisco Rent Ordinance limits the amount of annual rent increases. Landlords may not seek to impose a rent increase more than ***once every twelve months*** on a property subject to rent control. Also, landlords generally can only raise a tenant's rent by the amount set each year by the Rent Board. The current allowable maximum annual rent increase (March 1, 2020 through February 28, 2021) is 1.8%. Certain additional rent increases, such as capital improvement and operating/maintenance passthrough increases, may be available, but generally require Rent Board approval following a hearing.

Eviction Restrictions. The San Francisco Rent Ordinance provides that a landlord may not endeavor to recover possession of a rental unit absent one of sixteen (16) "just causes" for eviction. The San Francisco Rent Ordinance also requires landlords to show "just cause" in order to recover possession of driveways, storage spaces, laundry rooms, decks, patios, gardens, garage facilities or parking facilities on the same lot, supplied in connection with the use or occupancy of a dwelling unit. The "just causes" are either ***tenant-motivated*** (nonpayment of rent, paying rent late multiple times in any 12-month period, nuisance, unlawful purpose, refusal to renew lease on substantially the same terms, failure to provide access, and holdover by an unapproved subtenant) or ***landlord-motivated*** (owner move-in, demolition of a rental unit, capital improvements, lead paint remediation, Ellis Act/withdrawal from rental use). For a more comprehensive discussion of matters relating to tenant evictions in San Francisco, please consult our companion FAQs on TENANT EVICTIONS IN SAN FRANCISCO.

Are *All* Rent-Controlled Properties Subject to Both Rent Increase Limitations and Eviction Restrictions?

No. Many single-family homes, condominiums, and housing units constructed after June 13, 1979, are not subject to ***rent increase limitations.*** However, there are exceptions to this rule and owners should not simply assume that such units are exempt from rent increase limitations in every case. Effective January 20, 2020, nearly all residential properties in San Francisco are now subject to eviction restrictions and other provisions of the San Francisco Rent Ordinance, such as anti-harassment provisions and wrongful eviction damages.

What Limits does the State's Tenant Protection Act Place on Properties which aren't Covered by San Francisco's Rent Control Ordinance?

The 2019 state-wide Tenant Protection Act caps rent increases on many properties which aren't subject to local rent control laws to no more than 5% plus the increase in the Consumer Price Index, but no more than 10%, based on the *gross* rental rate for the rental unit over any 12-month period, including any rent discounts, incentives, concessions, or credits identified in the lease. Owners are also limited to no more than 2 incremental rent increases against the same tenant in any 12-month period. Properties built within the past 15 years, and most single-family homes and condominiums are exempt from the new law, but only if the tenants are given written notice of the exemption. Please consult our companion FAQs, "CALIFORNIA STATEWIDE RENT AND EVICTION LAW" for more information concerning this new law.

What are San Francisco's New Limits on Corporate Housing (Intermediate Length Occupancies)?

Corporate housing is defined as furnished and serviced housing units that are available to rent on a temporary basis with rental contracts that are for more than 30 days but less than a year. These units are offered to companies relocating employees, out-of-town performers appearing in extended length performances, professional athletes temporarily relocated from their home cities, insurance company temporary relocations of customers as after a fire or flood, patients from other cities undergoing medical treatment and their families, individuals experiencing a life transition such as a divorce, vacationers and others. San Francisco has recently forbidden the rental of housing units in most ***1-3 unit buildings*** for Intermediate Length Occupancy ("ILO") – tenant occupancy of ***more than 30 days***

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but ***less than one year*** – and capped the ***total number of ILOs*** permitted in larger buildings at a maximum of ***1,000 units for the entire City***. ***4–9 unit buildings*** must apply to the Planning Department for permission to designate one or more units as ILOs, and if the Department verifies that: i) not more than 25% of the units in the building will be designated as ILOs; ii) the building is not subject to SF Rent Control; iii) the building has no outstanding Notices of Violation; and iv) the 1,000 unit city-wide cap will not be exceeded, the application should be approved and the requested units granted ILO status. For ***10+ unit buildings***, ILOs will be restricted only to properties who have obtained Conditional Use Authorization from the City's Planning Commission, again subject to the 1,000 unit city-wide cap on ILOs, and subject to additional, even stricter requirements: i) a maximum of 20% of the units can be designated as ILOs; ii) at least two-thirds of the ILOs must be in the "downtown core" (near hotel and tourism districts, and job centers); and iii) no more than one-third of the ILOs may be permitted in "Sensitive Communities," as defined by the UC Berkeley Urban Displacement Project Sensitive Communities map.

What if I Currently Rent Units for Intermediate Length Occupancy?

It is estimated that at least 2,000–2,705 housing units in San Francisco are currently being rented as corporate housing (aka Intermediate Length Occupancy). San Francisco landlords have until June 22, 2022, to register their ***existing intermediate length occupancy units*** for inclusion in the maximum 1,000 ILOs allowed; unregistered ILO units will ***not*** be grandfathered under the law. ***Once the 1,000 ILO unit maximum is reached, all the remaining units will have to revert to a use other than intermediate length occupancy.*** By March 1st of each year, landlords renting ILO units will be obliged to submit to the City an Annual Unit Usage Report, providing the City with details about the ILO units they control.

What Happens After a Lease Term Expires?

If the property is subject to the San Francisco Rent Ordinance eviction restrictions, the tenant is entitled to continue renting the unit after expiration of a lease term regardless of any language in the lease agreement stating otherwise. If the landlord does nothing, the tenancy automatically converts to a month-to-month tenancy, and the same terms and conditions of the original lease agreement will apply, subject to the landlord's right to increase rent in accordance with the limitations set by the Rent Board, as discussed above. If, however, the landlord asks the tenant to renew the lease for another fixed term of the same duration, and the tenant refuses, the landlord may seek to terminate the tenancy on the basis of the tenant's refusal.

Can I Negotiate a Buyout with My Tenants to Move Out for Money?

Yes, but tenant buyout agreements (including agreements where tenant agrees to move-out for something other than a cash payment from landlord) are governed by the San Francisco Rent Ordinance, for units covered by the Ordinance. Prior to any discussion or bargaining with the tenant, a landlord must first provide the tenant with a Pre-Buyout Disclosure Form, which the tenant must sign, and then the landlord must file a Landlord Declaration regarding Buyout Disclosure at the San Francisco Rent Board. Only after the landlord has complied with these disclosure and declaration requirements can the landlord begin to negotiate the terms of a buyout with the tenant. Once the parties agree on the terms of a buyout, the parties must prepare a written document with the terms of the agreement and include specific statements in order to comply with the San Francisco Rent Ordinance. Landlords must file a copy of the buyout agreement with the Rent Board 46–59 days after the parties sign the agreement and keep certain records for up to 5 years. ***Tenants have 45 days to rescind any buyout agreement*** even if the landlord follows all of these rules and procedures. If a landlord either fails to provide the written disclosures to the tenant, or fails to follow the filing and record keeping rules of the law, or if the buyout agreement fails to conform to the law, the tenant, the City, or certain non-profit groups can sue the landlord for actual and statutory damages and recovery of attorney fees.

Can My HOA Prohibit Me from Leasing My Condo?

Prohibitions by condo and co-op Homeowners Associations ("HOAs") against ***renting*** a unit are ***unenforceable***, unless the prohibition was already in effect before the owner acquired title to his or her unit. Rental prohibitions already in effect before 2012 are grandfathered in and remain effective.

What if the Tenant Dies?

If a tenant dies in the middle of a fixed-term rental agreement, the tenancy continues until the end of the fixed term. Responsibility for the rest of the lease term passes to the tenant's executor or administrator. On the other hand, if a tenant dies during a month-to-month tenancy, a landlord is still required to return any security deposit to the administrator of the tenant's estate within 21 days of regaining possession of the rental unit, less permitted deductions for unpaid rent, damages, excepting ordinary wear and tear, and cleaning costs. Finally, if the death occurred on the premises, an owner or the owner's agent is required to disclose to prospective renters and buyers of the property that a death occurred and the manner of the death. The disclosure is mandatory for 3 years. Thereafter the disclosure is only required if asked. One important exception to this disclosure requirement is that the owner or owner's agent may not disclose that the decedent was ill with, or died as a result, of HIV/AIDS.

Can I Refuse to Accept Rent Paid by a Third Party?

No. Landlords are now required to allow their tenants to pay rent through a third party, provided that party gives the landlord a ***signed acknowledgment*** stating that he/she is not currently a tenant of the premises and that acceptance of rent does not create a new tenancy with the third party

What Must I Do to Comply with Fire Safety Requirements?

In 2016, the San Francisco Board of Supervisors passed legislation establishing new requirements for owners of residential buildings promoting fire safety, reducing the risk of fires, and preventing property damage cause by fires. The law requires:

(1) Disclosing Annual Fire Safety Information. Owners of Apartment Houses (any building containing three or more dwelling units, including residential condominiums) must disclose fire information to new residents on or before they begin to live in the building and once a year thereafter, and to post fire information in a place that is accessible to all residents.

(2) Disclosing Smoke Alarm Information. By January 31 of each year thereafter, owners of buildings intended for human occupancy in which one or more units is rented or leased must provide each tenant with a **Smoke Alarm Information Notice** regarding smoke alarm requirements on a form provided by the Fire Department, and must post the Annual Smoke Alarm Information Notice in at least one conspicuous location in the common area of each floor of the building.

(3) Filing A Statement of Compliance of Fire Alarm Maintenance, Inspection and Testing. Owners of Apartment Houses must maintain the fire and life safety systems in operable conditions at all times, and have the systems tested annually by qualified service personnel. Owners must file a Statement of Compliance on a form provided by the Fire Department, as follows:

(a) buildings with ***nine or more units*** are required to file by January 31 of each odd-numbered year, and

(b) buildings with ***three to eight units*** are required to file by January 31 of each even-numbered year.

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(4) Posting Statement of Compliance in Common Areas. Owners of Apartment Houses must post a copy of the most recently filed Statement of Compliance in at least one conspicuous location in the common area of each floor of the building. If no common area exists, the owner must provide a copy to each residential tenant in the building.

(5) Record Keeping. Owners of Apartment Houses must maintain written records of inspection and testing until the next test and for one year thereafter.

(6) Fire Alarm Service Sticker. Owners of Apartment Houses must place a sticker on the exterior of the fire alarm control panel cover that includes the company name, phone number, and the date of the last inspection or testing.

(7) Updating Fire Alarm Sleeping Area Requirements. For all buildings that are required to have a fire alarm system under the Fire Code, the Building Code, the Housing Code, or any other law, the owner must upgrade the fire system, if needed, to comply with the sound level requirements for sleeping areas, by the earlier of completion of work under a building permit with a cost of construction of $50,000 or more, or July 1, 2021.

Do Foreclosure Properties Have Different Rules for Rent and Eviction Control?

The rights of tenants under the San Francisco Rent Ordinance remain intact, regardless of a foreclosure. A foreclosure is ***not*** a "just cause" for eviction under the San Francisco Rent Ordinance. A foreclosure also does not affect the tenant's rental rate and the tenant is still entitled to ***all the utilities and housing services*** associated with the tenancy regardless of the foreclosure. If utilities or housing services are interrupted or terminated at any time during the tenancy, the tenant may file a petition for substantial decrease in housing services or a claim of attempted wrongful eviction for "termination of a housing service without just cause." Moreover, San Francisco rental units which were ***not*** subject to eviction control ***become*** subject to eviction control if a tenant is residing in the unit at the time of foreclosure, and the person or entity who takes title through foreclosure may ***not*** evict a tenant except for "just cause" as provided under the San Francisco Rent Ordinance. The new landlord must also serve a "post-foreclosure" notice on the tenant within 15 days of the foreclosure.

What Are "Banked" Rent Increases?

As described above, the Rent Board limits annual rent increases by small percentages which are announced every year on March 1. These rent increases can be imposed once annually on the tenant's "anniversary date" which is typically the date on which the tenancy began. For a variety of reasons, current and past landlords may have chosen not to impose some or all of these rent increases. The San Francisco Rent Ordinance permits landlords to "bank" these uncharged amounts and impose them later. Rent increases that are "banked" are calculated by adding the simple percentages of missed years, going as far back as 1982. That sum is then multiplied by the current rental rate, which yields the new rental rate. ***The increases may not be compounded.*** New landlords are permitted to impose "banked" rent increases that were not imposed by their predecessors. To impose a "banked" rent increase, a landlord must follow the same rules as for any other rent increase, that is, by serving a thirty- or ninety-day notice depending on whether the increased amount is up to 10% or greater than the rent for the preceding 12 months. "Banked" rent increase should be calculated very carefully to make sure a landlord does not accidentally overcharge for rent. If the increase is imposed on some date other than the "anniversary date" the landlord may lose one year's increase and the "anniversary date" for future rent increases will shift.

What Fees and Expenses Can be Passed Through to Tenants?

Landlords can petition the SF Rent Board for rent increases for ***capital improvements, increased operating and maintenance costs, and utility, water, and property tax pass-throughs***, but these increases are severely limited, and must first be approved by the Rent Board. Many pass-through expenses are amortized over a period of 10, 15, or 20 years. The Rent Board has a number of special petitions and forms that must be utilized and completion of these documents often requires the input of an expert. Tenants are also entitled to notice and an opportunity to object to these types of increases at a Rent Board hearing. While there is no fee for a landlord to file a Rent Board petition for pass-through rent increases, legal and expert fees often can become expensive. On the other hand, landlords may pass through to their tenants half of the annual Rent Board fee without a petition. The Rent Board fees are assessed on rental units covered by the San Francisco Rent Ordinance. The tenant's portion of the current fee is $25 per apartment unit ($12.50 per residential hotel unit).

Can My Tenant Sublet the Unit on Airbnb?

San Francisco currently permits owners and tenants to rent out certain units on less than 30-day terms to tourists, subject to numerous regulations. The units must be the principal residence of the owner or tenant. The owner or tenant must register the unit with the City, pay a registration fee, follow reporting and auditing rules, and remain in good standing. The owner or tenant must also carry sufficient liability insurance and post certain safety disclosures within the unit. The short-term tourist rentals generally may not occur for more than 25% of the days in the year the owner or tenant principally resides in the unit. Tenants may not charge more rent to tourist renters than they pay proportionally to their landlords. Landlords are restricted from evicting tenants who take advantage of this law as long as the tenants follow all the new regulations. However, the law does not restrict a landlord's ability to evict a tenant on the basis of breach of lease, including breach of a prohibition on subletting or assignment, or creation of a nuisance. A landlord may also evict a tenant for unlawful use of the unit if the tenant fails to cure a violation of the law within 30 days, or repeatedly violates the provisions of the law.

What Are My Obligations to Subtenants?

The San Francisco Rent Ordinance and Rent Board Rules and Regulations have been amended to change the rules regarding subletting. Tenants may now, generally, add subtenants to rental units, ***even in excess of lease occupancy limits,*** as long as they follow certain procedures and the new subtenants do not exceed 2 persons in a studio, 3 persons in a one bedroom, 4 persons in a two bedroom, 6 persons in a three bedroom, and 8 persons in a four bedroom. In order to evict a tenant for a subletting violation, a landlord must now provide a 10-day notice to cure or quit (rather than a 3-day notice to cure or quit), and the tenant may cure by removing an unapproved subtenant or making a written request and thereafter following the new procedures to obtain approval. Short-term rentals, such as subleasing on Airbnb, are not permitted under these new subleasing rules. A lawful subtenant in a rent-controlled unit is entitled to all of the same protections as a tenant under the San Francisco Rent Ordinance, including rent increase limitations; however, in instances when ***all*** original tenants no longer permanently reside in the unit, a landlord ***may*** be able to charge a new rent to the hold-over subtenants as if they were moving into a vacant unit (see below).

What Are the Subtenants' Rights When All Original Tenants Vacate?

Generally, a landlord has the right to evict any unauthorized subtenant when all the original tenants vacate. Also, under both state and local law, a landlord has the right to re-set the rent for the unit as if it were vacant, when all original tenants no longer permanently reside in the unit. However, a landlord's actions, or failure to act, can affect these rights.

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Usually, if the lease allows subletting, then subtenants are ***not*** "unauthorized" and may not be evicted. Even if the lease agreement prohibits subletting, the landlord's knowledge of an unauthorized subtenant can constitute a waiver of a landlord's right to evict when the original tenants vacate. These issues are further complicated when a landlord is forced to allow a one-for-one replacement of a tenant, or must accept family members of a tenant notwithstanding a lease prohibition.

A subtenant may inherit the original occupant's rent control if that subtenant establishes a direct relationship with the landlord. Landlords are strongly advised against accepting rent directly from subtenants, adding them to agreements, or even responding to repair/maintenance requests, all of which tend to create a direct landlord-tenant relationship. When a landlord approves a subtenant or becomes aware that a subtenant has taken possession of the rental unit, the landlord should consider providing the original occupant(s) and subtenant(s) a notice under Rent Board Rule 6.14 in order to preserve the landlord's right to increase the rent to market once all original occupants no longer reside there. Landlords should consult with an attorney about subletting issues and preserving their rights.

What Rights and Obligations Do "Master Tenants" Have?

"Master Tenants" are treated like landlords in some respects with regard to their subtenants, and as a result they have many similar rights and obligations. For instance, Master Tenants can evict their subtenants without "just cause," but only if they give their subtenants a written disclosure of this right at the beginning of the subtenancy relationship. Master Tenants are required to disclose to subtenants in writing, before the beginning of the subtenancy relationship, the amount of rent they pay to the property owner. With regard to setting a rental rate, Master Tenants are not allowed to charge a rent that is greater than the subtenant's proportional share of the rent paid to the property owner. This proportional share is based on the shared value of common spaces and exclusive use spaces (such as bedroom size or value, access to garage or storage, or private bathroom), shared or exclusive amenities and utilities, and other reasonable special obligations. A Master Tenant may be able to charge a subtenant more than the proportional share the Master Tenant pays the property owner if the Master Tenant provides additional furnishings, services, or takes on additional obligations which are not provided by the property owner; however, a Master Tenant may not charge subtenants more rent than the Master Tenant pays to the property owner.

Do Rent & Eviction Control Protections Apply to a Landlord's Roommates?

A landlord who is an owner of the property who resides in the same rental unit as his or her tenant is not subject to eviction restrictions and can evict the tenant without "just cause." However, the landlord is still subject to the rent increase limitations described above. Where a landlord resides with more than one tenant-roommate "just cause" to evict may be required if the property is operated akin to a "boarding house." Litigation or legislative amendments to the San Francisco Rent Ordinance are expected to clarify this uncertainty.

When Can I Enter the Tenant's Unit?

Landlords and their agents have limited rights of access to tenant-occupied units, but may not abuse those rights to harass a tenant. A landlord may enter a dwelling unit without the tenant's permission and without a Court order only in cases of emergency, to make repairs or improvements, to supply necessary or agreed services, to exhibit the unit to buyers, tenants, lenders, etc., to make certain move-out inspections, or when the tenant has abandoned or surrendered the premises. Generally, entry may only be made during normal

business hours following reasonable ***written*** notice (24 hours is presumed reasonable). No notice is required in the case of an emergency. The law does not specify what "normal business hours" are and unless there is a written lease defining those hours more broadly, "normal business hours" will typically be from 9:00 a.m. to 5:00 p.m., Monday through Friday. However, a recent California Court of Appeal case defined "normal business hours" in the context of showing the rental unit to prospective purchasers. In that case, "normal business hours" is determined by licensed professionals in real estate and the hours they generally keep their places open for the transaction of business. Based on this case, "normal business hours" would include weekend open houses and evening showings. Written evidence of each entry must be left inside the unit if the tenant is not present during the entry. If the property is being sold, a written notice to the tenant can require access to show the unit to buyers for 120 days on 24 hours' ***verbal*** notice, in person or by phone. Tenants may waive these rights and allow a landlord or the landlord's agent to enter without first providing 24 hours' notice or for a reason not listed above.

Can I Restrict Smoking in My Building?

Yes. Residential landlords can prohibit tobacco smoking within any unit, common space, and interior and exterior portions of their buildings. For new tenants, the smoking restrictions and prohibitions must be described in the rental agreement. For existing tenants with pre-existing permission to smoke tobacco within their units or around the property, a new prohibition would constitute a change in the terms of tenancy requiring mutual consent to be enforceable.

How Can I Deal with Noisy or Disruptive Tenants?

Written leases should contain rules that address acceptable tenant behavior, e.g., a provision limiting excessive noise during certain hours of the day. Tenants who violate such terms of tenancy subject themselves to the possibility of eviction for breaching lawful obligations of their lease or for creating or permitting a nuisance. Landlords owe an implied covenant of quiet use and enjoyment to other tenants on the property and could be liable to neighbors for permitting a nuisance if they are not proactive in addressing noisy or disruptive tenant issues. Landlords should issue warnings to their tenants before serving 3-day notices to cure or quit, and if necessary, promptly pursue unlawful detainer lawsuits to evict noisy or disruptive tenants. Sometimes noise issues can be resolved or substantially improved by requiring carpeting over padding on hardwood floors or adding insulation between floors and walls; such investments can substantially reduce costly disputes in the future.

Must I Provide a Recycling Service for My Tenants?

Residential buildings with ***five or more units*** (or any multi-family residential dwelling or business that generates more than four cubic yards of commercial solid waste per week) are required to arrange for recycling services. Property owners may require tenants to separate their recyclable and compostable materials.

Must I Allow a Choice of Internet Service Providers in my Building?

San Francisco requires that Internet Service Provider (ISPs) have reasonable access to buildings to offer competing services and to give tenants a choice over their ISP provider, by prohibiting owners of buildings from interfering with their tenants' choice of ISPs. Landlords must now allow ISPs access to their buildings to install additional hardware and wiring, including fiber-optic installations.

Do I Have to Compost?

San Francisco has an aggressive environmental law mandating every residence and business to have three separate color-coded bins for waste: blue for recyclables (e.g., cans, bottles, paper); green for compost (e.g., food scraps, leaves, dirty paper napkins); and black for

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trash (e.g., plastic bags, Styrofoam, diapers). Failing to properly sort refuse could result in warnings followed by a fine up to $1,000 per offense.

Do Units Require Carbon Monoxide Detectors?

State law requires owners of all rental units to install carbon monoxide devices in each dwelling unit having fossil fuel burning heaters or appliances, fireplaces, and/or attached garages.

What are the City's Bed Bug Notice Requirements?

Landlords of residential dwellings must provide a written notice to a prospective tenant prior to creating a new tenancy, stating: (a) general information about bed bug identification, behavior and biology, the need for cooperation for prevention and treatment, and the importance of prompt written reporting of suspected infestations to the landlord; and (b) the procedure to report suspected infestations to the landlord. Landlords with existing tenants should have already provided this notice, and if not, they should do so directly.

What Flood Risk Disclosures are Required?

San Francisco requires owners of real property located in areas at risk for 100-Year Storm Flood events to provide prospective buyers ***and tenants*** with a special disclosure statement. Further information can be obtained at the San Francisco Public Utilities Commission website, including access to its 100-Year Storm Flood Risk Map.

What Are the Rules on Security Deposits?

A security deposit is essentially a sum of money collected by a landlord from a tenant at the beginning of the tenancy to be used for the advance payment of rent (such as "last month's rent") or to compensate the landlord for a tenant's default in payment of rent, to repair damages to the premises, except ordinary wear and tear, caused by a tenant or the tenant's guests, or to clean the premises upon termination of the tenancy. For unfurnished units, the security deposit may not exceed two months' rent; for furnished units, the security deposit may not exceed three months' rent. For Service Members, the maximum is lowered to one month's rent (unfurnished) or two months' rent (furnished) (Civil Code §1950.5). "Service Members" are members of the militia in active state or federal service and members of active or reserve federal Armed Forces on active duty. Landlords are prohibited from refusing to rent to Service Members to avoid the lower maximum security deposits.

A landlord must notify the tenant of his or her right to a pre-move-out inspection within 14 days of the tenant's move-out date, allowing the tenant to remedy possible deductions from the security deposit. ***Within 21 days after a tenant vacates, the landlord is required to return the security deposit.*** If landlord deducts $125 or more, then landlord is required to provide an itemized statement indicating the basis for, and the amount of deductions within the same 21 day period. Local law also requires all San Francisco landlords, including owners of units that do not fall under the jurisdiction of the San Francisco Rent Ordinance, to pay interest on the security deposit. The current interest rate for the period from March 1, 2019, to February 28, 2020, is 2.2%. The interest on security deposit must be paid annually. Any interest payments that were "banked" must be paid to a tenant within 14 days following the tenant's move-out.

Disputes over the return of security deposits between landlords and tenants are frequent. It is important for landlords to understand the timing and notice requirements required under state and local law to avoid or prevail in litigation. The jurisdictional limit of **Small Claims** court for actions brought by individuals is currently **$10,000**. Small Claims court offers a quick and cost-effective resolution of security deposit disputes.

Landlords and tenants can agree to use electronic communications for discussions on security deposits, including the notice of right to inspection prior to termination of the tenancy. However, landlords are still required to deliver the notice and itemized statement of security deposit deductions via first class mail or personal delivery.

How do I Choose a Lawyer to Assist Me in Landlord/Tenant Matters?

A Law Firm Specializing in Landlord/Tenant Issues Should Offer You:

- Experienced attorneys knowledgeable in all aspects of both the creation and termination of landlord/tenant relationships;
- Skills in drafting and reviewing leases;
- A thorough understanding of the San Francisco Rent Ordinance.

What Sets Goldstein, Gellman, Melbostad, Harris & McSparran, LLP ("G3MH") Apart?

EXPERIENCE:

G3MH has been a respected member of San Francisco's real estate community for over thirty-five years. During that time, we have provided guidance to, and represented thousands of property owners in a wide range of landlord/tenant matters, including lease negotiations, voluntary termination of tenancy, and wrongful eviction defense.

SOCIAL CONSCIENCE:

G3MH does not represent landlords in landlord-motivated evictions of elderly, disabled, or catastrophically ill tenants.

REASONABLE FEES:

G3MH provides services on an hourly basis. The hourly rate charged will be based upon the level of experience of the attorney you work with, which we will endeavor to match to the task at hand.

SERVICE:

G3MH is a full-service law firm, which means that our attorneys and paralegals are available to offer additional guidance in tenancy-in-common issues, condominium conversion, title transfer and vesting, trust and estate matters, easements, property tax issues, and all other real estate matters. No other firm in San Francisco offers the staffing and resources to meet your needs in every aspect of residential real estate management.

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Partner **David R. Gellman** has extensive experience in condominium subdivisions, tenancy-in-common (TIC) formation, landlord/tenant (rent control), real estate litigation, commercial leasing, like-kind exchanges, and estate planning. His companion article, "Managing Small Condominium HOAs" can be found on the firm's website at www.g3mh.com. Mr. Gellman is an accredited instructor with the California Department of Real Estate, and frequently conducts co-ownership workshops for attorneys, real estate agents, and prospective home buyers. Mr. Gellman can be contacted via email at DGellman@g3mh.com, or by phone at 415/673-5600 ext. 229.

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