

# New Tenant Buyout Rules for San Francisco Landlords

Michael J. McLaughlin  
McLaughlin Yeh LLP  
2201 Market Street  
San Francisco, California 94114



# McLaughlin Yeh – Who We Are, What We Do

- San Francisco-based boutique litigation firm
- We represent:
  - Landlords in disputes with tenants;
  - Buyers and sellers of real estate;
  - Landowners in disputes with other landowners (i.e., TICs and condominiums).
- We also represent businesses in business disputes.
- We pride ourselves on crafting individual strategies tailored to each individual client.



# Overview

- Incentives for Tenant Buyouts
- The “Old Regime”
- Rationale for the New Rules
- Applicability and Definitions
- Disclosure Requirements
- New Requirements for Buyout Agreements
- Tenant Rights to Rescission
- Filing and Posting Requirements
- New Restrictions on Condo Conversions
- Penalties and Enforcement



# Incentives for Tenant Buyout Agreements

- S.F. rent and eviction controls among nation's most stringent
- Limits on rental increases per year
- Termination of tenancy requires "just cause"
- Rents quickly become severely "under water"
- Acrimonious tenant-landlord relationships
- Use of buyouts to regain possession to increase rent, get rid of problem tenants, or to sell property without tenants



# The Old Rules on Tenant Buyouts

- Buyout agreements are contracts.
- Before March 2015, those buyout agreements were largely unregulated.
- Landlords and tenants were free to negotiate whatever terms they wanted.
- There has always been a question whether buyout agreements are enforceable if breached.



# Rationale for the New Rules

- New rules effective March 7, 2015.
- Board of Supervisors were concerned about:
  - The disparity between rent-controlled and market rate rents;
  - Landlords who wanted to sell property unoccupied;
  - Landlords using buyout agreements to circumvent eviction controls.
- Board believes landlords use buyout agreements to avoid paying relocation monies in no-fault evictions.



# Applicability and Definitions

- New buyout rules apply to all landlords and tenants subject to the Rent Ordinance.
- “Buyout Agreement” – an agreement wherein the landlord pays the tenant money or other consideration to vacate a rental unit.
- An agreement to settle a pending UD is not a “Buyout Agreement.”
- But settlement agreement prior to litigation would be.
- “Buyout Negotiations” are “any discussions” – written or oral – regarding the possibility of entering into a Buyout Agreement.



# Disclosure Requirements

- The new rules require landlords to provide tenants with certain disclosures before starting Buyout Negotiations.
- Thus, a landlord violates the new law at the very outset if he fails to give the required disclosures before approaching the tenant about a buyout.
- The new disclosures are provided on a form available from the Rent Board.
- Landlords must use the Rent Board form.





# The Required Disclosures

- Statement that tenant has right not to enter into Buyout Agreement
- Statement that tenant has right to consult an attorney before entering into Buyout Negotiations or a Buyout Agreement
- Statement that tenant may rescind the Buyout Agreement for up to 45 days after signing
- Statement that tenant may find copies of other Buyout Agreements at the Rent Board
- List of tenants rights organizations
- Statement that tenant may obtain information about his or her rights from the Rent Board's office, telephone, or on-line
- Statement concerning effect of Buyout Agreements on condo conversions
- Disclosure of name of persons who will negotiate on behalf of landlord



# Required Notice to the Rent Board

- Before commencing Buyout Negotiations, landlord must make certain disclosures to the Rent Board.
- Again, this is a pre-negotiation disclosure requirement.
- The disclosures must be made on a form provided by the Rent Board.
- A landlord who fails to file this form before commencing Buyout Negotiations with a tenant violates the statute from the outset.



# The Required Rent Board Disclosures

- The landlord's name, business address, business email, and business telephone number
- The name of each tenant the landlord intends to buy out
- The address of the subject rental unit
- A statement under penalty of perjury that the landlord provided each tenant with the required pre-negotiation disclosures



# Requirements for Buyout Agreements

- Under the new rules, every Buyout Agreement must:
  - Be in writing;
  - Include a statement in **bold** 14-point type close to the tenant's signature line informing the tenant that he or she may cancel the agreement for up to 45 days;
  - Include a statement in 14-point type informing tenant that he or she need not enter into the agreement and may consult a lawyer, and that information on his or her rights is available from the Rent Board; and
  - Include a statement in 14-point type informing tenant that of restrictions on condo conversions for certain Buyout Agreements.
- A Buyout Agreement that does not include these disclosures is not effective and may be rescinded at any time.
- Each tenant must separately initial each of these disclosures.



# Tenant's Rights to Rescission

- Tenants have 45 days from the date the Buyout Agreement is signed by all parties to rescind the agreement.
- A tenant may rescind by sending statement to landlord indicating that tenant has rescinded the Buyout Agreement.
- The tenant may hand deliver, email, or mail in the U.S. Postal Service the rescission statement.



# Filing and Posting Requirements

- Landlords must file a copy of the finalized Buyout Agreement with the Rent Board no sooner than 46 days after execution and no later than 59 days after execution.
- Buyout Agreements that are rescinded need not be filed.
- The Rent Board will keep a searchable database of all filed Buyout Agreements.
- The Rent Board will redact all information about the tenants before publicly posting the Buyout Agreements.



# New Restrictions on Condo Conversions

- New law amends the San Francisco Subdivision Code to prohibit certain condo conversions following a Buyout Agreement.
- Under the amended Subdivision Code, a landlord may not convert to condo if:
  - A senior, disabled, or catastrophically ill tenant has vacated under a Buyout Agreement entered into after October 31, 2014; or
  - Two or more tenants who are not senior, disabled, or catastrophically ill have vacated under a Buyout Agreement entered into after October 31, 2014, and within 10 years prior to the condo conversion application.
- “Senior” is 60+ and in unit for 10+ years at time of Buyout Agreement.
- “Disabled” is one who is disabled under the ADA and in unit for 10+ years at time of Buyout Agreement.
- “Catastrophically ill” is one who is “disabled” under the ADA and has a “life threatening illness” and in unit for 5+ years at time of Buyout Agreement.



# Penalties and Enforcement: Liability to Tenants

- Tenant who vacates a unit on basis of Buyout Agreement may bring civil action for failure of landlord to:
  - Comply with pre-negotiation disclosures; or
  - Include proper disclosures in the Buyout Agreement.
- Tenant may recover his or her actual damages, plus:
  - \$500 for failure to make pre-negotiation disclosures;
  - Up to 50% of tenant's actual damages for failure to include required disclosures in the Buyout Agreement; and
  - Tenant's reasonable attorney's fees and costs.
- Incredibly, if landlord prevails in tenant's lawsuit, landlord is not entitled to recover attorney's fees and costs.





# Penalties and Enforcement: Liability to City Attorney and Tenant Groups

- The City Attorney and certain tenants rights groups may sue landlords for failure to file Buyout Agreements with the Rent Board.
- A landlord who fails to file a Buyout Agreement with the Rent Board subject to \$100 per day penalty for each document not filed up to \$20,000 in a single civil action.
- If the City Attorney or tenant's rights group prevails, that party may recover reasonable attorney's fees and costs.
- Again, incredibly, if landlord prevails in lawsuit by City or tenant's right group, landlord is not entitled to recover attorney's fees and costs.
- Four year statute of limitations.

