

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2364 (Bloom) – As Amended March 22, 2018

SUBJECT: Rental control: withdraw from accommodation

SUMMARY: Makes a number of changes to the Ellis Act (Act). Specifically, **this bill:**

- 1) Provides that if the property is returned to the rental market within ten years (increased from five under existing law) following the filing of the notice of intent to withdraw or within ten years (increased from five) after the property's withdrawal, the rental unit must be offered at the lawful rent in effect at the time any notice of intent to withdraw the accommodations is filed with the public entity, plus annual adjustments available under the system of control.
- 2) Defines the term "lawful rent" to mean the last rent paid by the most recent bonafide tenant if the unit is vacant at the time the notice to withdraw is filed.
- 3) Provides that if the property is offered for rent within five years (increased from two under existing law) of the property being withdrawn from the market:
 - a) the property owner is liable to any evicted tenant for actual and exemplary damages;
 - b) the public entity may also sue the property owner for exemplary damages for the displacement of tenants and lessees; and
 - c) the property owner must offer former evicted tenants the right of first refusal to reoccupy the property pursuant to a reinstated rental agreement where the tenant has advised the owner of this entitlement within 30 days of the tenant's eviction from the premises when the property was first withdrawn.
- 4) Provides that nothing in the section of the Act relating to enforcement precludes a tenant or public entity from pursuing any alternative remedy available under the law.
- 5) Provides that if the property is returned to the rental market within 10 years from the date of withdrawal, the owner must first offer the returned unit to the tenant displaced by the withdrawal, if the tenant has advised the owner in writing within 30 days of the displacement of his or her desire to consider an offer to renew the tenancy and has furnished the owner with an address to which that offer is to be directed, of a desire to consider an offer to renew the tenancy. Existing law provides that a tenant only has a right of first refusal in this circumstance if the tenant has requested the offer within 30 days after the owner had notified the public entity of an intention to offer the property again for rent. This bill also requires the owner to offer to reinstitute the agreement or lease on the same terms and at the same rent in effect at the time of displacement to that displaced tenant, and removes existing law's cap on punitive damages if this provision is violated.

- 6) Provides that the date of withdrawal for the accommodations as a whole for the purposes of calculating the time periods described above shall be the last date of withdrawal of any extended tenancy.
- 7) Makes a number of technical changes to clarify that one date of withdrawal of accommodations applies to all units in a property subject to the Act.
- 8) Provides that it was not the legislature's intent, in enacting the Act, to permit an owner to return to the rental market less than all of the accommodations withdrawn pursuant to the Act.

EXISTING LAW:

- 1) Prohibits, under the Act, a public entity, by statute, ordinance, or regulation, from compelling an owner of any residential real property, except for a residential hotel meeting specified requirements, to continue to offer rental units for rental housing (Govt. Code Section 7060 et. seq.).
- 2) Provides that the Act only applies when an owner seeks to remove all units from rent or lease in a building, or all units on a property with a building containing three or fewer units (Govt. Code Section 7060).
- 3) Provides authority for a public entity to regulate the subsequent use of the property and mitigate any adverse impacts on people who are displaced by the withdrawal of a property from the rental market (Govt. Code Section 7060.1).
- 4) Authorizes a public entity having a system of rent controls to require the following when the owner of a rental property subject to rent controls has exercised his or her Ellis Act rights:
 - a) If the property is offered for rent within two years the property was withdrawn from the market:
 - i. the property owner is liable to any evicted tenant for actual and exemplary damages;
 - ii. the public entity may also sue the property owner for exemplary damages for the displacement of tenants and lessees; and
 - iii. the property owner must offer former evicted tenants the right of first refusal to reoccupy the property pursuant to a reinstated rental agreement where the tenant has advised the owner of this entitlement within 30 days of the tenant's eviction from the premises when the property was first withdrawn.
 - b) If the property is returned to the rental market within five years following the filing of the notice of intent to withdraw or within five years after the property's withdrawal, the rental unit must be offered at the lawful rent in effect at the time any notice of intent to withdraw the accommodations is filed with the public entity, plus annual adjustments available under the system of control.
 - c) If the property is returned to the rental market within 10 years from the date of withdrawal, the owner must first offer the returned unit to the tenant displaced by the

withdrawal where the tenant has requested the offer within 30 days after the owner had notified the public entity of an intention to offer the property again for rent. The owner of the accommodations shall be liable to any tenant or lessee who was displaced by that action for failure to comply with this requirement, for punitive damages in an amount which does not exceed the contract rent for six months. (Government Code Section 7060.2)

- 5) Provides that in rent controlled jurisdictions, the rent control ordinance may specify that if a landlord opts to remove rental housing from the rental market, the landlord must give tenants 120 days' notice before terminating the tenancy and in the case of tenants that are disabled or over 62 this notice must be one year. (Government Code Section 7060.4)
- 6) Provides that in rent-control jurisdictions, the rent control ordinance may require owners to give notice before withdrawing the building from the market. The owner must provide 120 days' notice — or one year's notice in the case of tenants who are disabled or more than 62 years old, provided they have lived in the accommodations for at least one year prior to the date of delivery to the public entity of the notice of intent to withdraw — before terminating the tenancy. (Govt. Code Section 7060.4).

FISCAL EFFECT: None

COMMENTS:

Background: In *Nash v. City of Santa Monica (1984) 37 Cal.3d 97*, the California Supreme Court upheld the power of a city, in the context of a land use ordinance, to require a residential real property owner to obtain a removal permit, under specified criteria, before the owner could demolish his or her rental property and cause its removal from the marketplace. SB 505 (Ellis), Chapter 1509, Statutes of 1985, preempted a local government's authority to compel a rental property owner to stay in the rental housing business by prohibiting a local government from enacting or implementing any law to compel a residential real property owner to offer, or continue to offer, the property for lease or rent.

The Act only applies when an owner seeks to remove all the units within a building or all units on a property with a building containing three or fewer units from the market, and only has real effect in cities or counties with rent control and just cause evictions. The Act authorizes local governments to place restrictions on how property owners can "Ellis" a property and exit the rental property market. An owner can be required to give tenants 120 days' notice that the property is being withdrawn from the rental market. Tenants who are over 62 or disabled must receive one year's notice, provided they have lived in the accommodations for at least one year.

A number of restrictions apply to situations where owners offer units for rent within certain time frames (2 years, 5 years, and 10 years) after removing a property from the rental market pursuant to the Act. For example, owners are required to re-rent a unit at the rent control amount at the time the unit was withdrawn, if they offer it for rent within five years of filing to withdraw or withdrawing the property.

Need for this bill: The author contends that the Act "expressly prohibits withdrawing less than all the units from the rental market. And the law indicates that there is only one withdrawal date for the purpose of calculating rental amounts when units are re-offered for rent. But there is also language governing the tenants' lease termination date that seems to allow multiple withdrawal

dates. In addition, there is no provision that specifies that there is only one date that applies if the property is put back on the rental market. As a consequence, landlords are taking advantage of this confusion and removing units from the rental market and returning them in a piecemeal fashion to avoid the Act's restrictions and evade rent control. They are also applying different withdrawal dates to different units and claiming that returning one unit to the market does not obligate the landlord to re-offer any other units to former tenants. This allows landlords to effectively withdraw less than all the units from the rental market and, in fact, never actually leave the rental market at all while still having successfully evicted all the tenants.

"This confusion has led at least one court of appeal to find that a landlord could apply different withdrawal dates to determine the rental amount when re-renting a unit. This allowed the landlord to choose a date outside the window of time when the Act's rent restrictions apply, despite having returned multiple other units on the property to the rental market at an earlier time. The landlord never actually left the rental market but nevertheless was able to evict all the tenants and re-rent all the units at market rates. This is a gross distortion and subversion of the purpose of the Ellis Act."

AB 2364 would make the following changes and clarifications:

- 1) That there is one withdrawal date for the property, and this date shall be the last date of withdrawal of any extended tenancy;
- 2) That if any unit is returned to the rental market, the property is deemed back on the market and all the obligations of the Act must be followed with respect to all the units;
- 3) That if a unit is vacant prior to the filing of an Ellis notice, the lawful rent for that unit is the rent for the most recent tenant.
- 4) Extends existing law's conditions on units returned to the rental market within two years to five years.
- 5) Extends existing law's conditions on units returned to the rental market within five years to ten years.
- 6) Makes changes to existing law's conditions on units returned to the rental market within ten years.

Arguments in support: According to the City of West Hollywood, "the Ellis Act is a blunt instrument. Most tenants, unless they are at least 62 years old or living with a disability, can be evicted with only 120 days' notice. Those who qualify based on age or disability status are allowed to remain for up to one year. But, if any tenant remains beyond that time, they are subject to an unlawful detainer proceeding. The owner meanwhile does not have to demonstrate any other viable use for the property or reveal any future plans for the site. In fact, the law allows owners to re-enter the residential rental withdrawal from the rental market. This creates a powerful incentive for owners to leave the rental market only temporarily in order to evade eviction protections and terminate long term below-market tenancies. Since its enactment in 1986, 764 units in 203 properties in the City of West Hollywood were removed from the rental market through the Ellis Act. In the City of Los Angeles, 1,000 units were removed in 2015 alone. AB 2364 will make much needed reforms to the Ellis Act by protecting California tenants from evictions and extending the timelines for tenants who do face evictions.

Arguments in opposition: Opponents are concerned that this bill will make it harder to return rental units to the market. According to opponents, "Current law allows rental units that were removed through the Ellis Act to be returned to the rental market after a period of 5 years, so long the owner first offers the units to the previous tenants. AB 2364 doubles the time period to 10 years for all the units in a building even those units that are vacant at the time of the Ellis Act. In addition, AB 2364 would also require an owner to return all units in the building back to the rental market even if the owner only wants to live in one and return all other units in the building.

Staff comment: As documented in the media, Ellis Act evictions have increased in recent years. A 2016 investigation by the Los Angeles Times revealed that 1,137 rent-controlled units in Los Angeles were removed from the market in 2015—a number that has almost tripled since 2013, while the number of evictions from rent-controlled units has doubled. Across Los Angeles, over 20,000 units have left the market since 2001. In Santa Monica, Ellis Act evictions jumped 75 percent between 2013 and 2014, according to a 2015 report by the Anti-Eviction Mapping Project.

The removals peaked during the housing bubble, bottomed out in the recession, and have risen significantly since then. As the Times investigation notes, many of the recent evictions have been carried out by developers who have purchased the buildings with the intention of demolishing them to construct pricier housing. At least 51% of the Los Angeles properties removed under the Act in 2013 had been purchased within the previous year.

Related legislation:

AB 982 (Bloom, 2017): Would have extended the term for withdrawal of accommodations under the Act to one year for all tenants and lessees without regard to age or disability. *This bill died in the Assembly Committee on Housing and Community Development.*

AB 423 (Bonta, 2017): Would have exempted residential hotels in the City of Oakland from the Act beginning January 1, 2018. *This bill failed passage on the Assembly Floor.*

SB 1267 (Allen, 2016): Would have required a city or county by ordinance, when the city or county requires notice of intent to withdraw accommodations pursuant to the Act, to give one year's notice to a tenant with a custodial or family relationship with a pupil enrolled in a primary or secondary school who lives in an accommodation before terminating a tenancy. *This bill died in the Senate Transportation and Housing Committee.*

SB 364 (Leno, 2015): Would have allowed the city and county of San Francisco to prohibit, by ordinance or ballot measure, a rental housing owner from removing a building from the market pursuant to the Act unless all owners in the property have held their ownership interest for at least five years. *This bill failed passage in the Senate Transportation and Housing Committee.*

SB 1439 (Leno, 2014): Would have allowed the city and county of San Francisco to prohibit, by ordinance or ballot measure, a rental housing owner from removing a building from the market pursuant to the Act unless all owners in the property have held their ownership interest for at least five years. *This bill failed passage in the Assembly Housing and Community Development Committee.*

SB 948 (Alarcon), Chapter 968, Statutes of 1999: Made numerous changes to planning and zoning law, including changes to the Act that increased the time when a unit may be withdrawn from the market from 60 days to 120 days after notice is provided to the public entity. Increased the time when a unit occupied by a tenant who is disabled or at least 62 years old may be withdrawn from the market to one year after notice is provided to the public entity.

Double-Referred: If AB 2364 passes out of this committee, the bill will be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation
City of West Hollywood
Western Center on Law and Poverty

Opposition

Apartment Association of Greater Los Angeles
Apartment Association of Orange County
Apartment Association, California Southern Cities
California Apartment Association (unless amended)
California Association of Realtors
California Building Industry Association (unless amended)
California Business Properties Association (unless amended)
California Chamber of Commerce (unless amended)
Civil Justice Association of California (unless amended)
East Bay Rental Housing Association
North Valley Property Owners Association
San Diego County Apartment Association
Santa Barbara Rental Property Association

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