

Date of Hearing: June 18, 2014

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Ed Chau, Chair

SB 1439 (Leno) – As Amended: June 12, 2014

SENATE VOTE: 21-13

SUBJECT: Residential real property: withdrawal of accommodations

SUMMARY: Allows the city and county of San Francisco to restrict Ellis Act conversions for property owners who have owned their rental property for five years or less. Specifically, this bill:

- 1) Allows the city and county of San Francisco to do the following through an ordinance or ballot measure:
 - a) Prohibit an owner of a rental property from filing a notice to withdraw a property from rent, under the Ellis Act, unless the owner has owned the property for five continuous years or more. Requires that if the owner is not an individual person, then all persons or entities with an ownership interest in the property must have held the property for five years or more.
 - b) Prohibit any person or entity that withdraws a property under the Ellis Act from withdrawing another property if it is purchased within ten years of that filing.
 - c) Prohibit any person or entity with an ownership interest in a property from acting in concert with a co-owner, successor owner, prospective owner, agent employee, or assignee to circumvent the above prohibitions.
 - d) Require an owner notifying the city and county of San Francisco of an intention to withdraw a property under the Ellis Act to include in the notice, the identify of each person, entity, and members of an entity, with an ownership interest in the property.
- 2) Exempts owners who are natural persons, own no more than two properties, and own no more than a total of four residential units, from the requirement to own a property for five or more continuous years before withdrawing the property from the rental market under the Ellis Act.
- 3) Provides that a violator of any of these provisions is liable to the tenant for actual damages, special damages of at least \$2,000 for each violation, and reasonable attorney fees and court costs as determined by the court.

EXISTING LAW:

- 1) The Ellis Act prohibits a public entity, by statute, ordinance, or regulation, from compelling an owner of any residential real property to offer, or continue to offer, the rental units in the property for rent or lease. (Government Code Section 7060)

- 2) 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 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 rent level, as specified, in effect when the withdrawal notice was filed; and further, if that returned rental unit is offered again for rent at any time during the five-year period, the rental rate for any re-rental of the returned unit shall be that rent level.
 - b) 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.
 - 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. (Government Code Section 7060.2)
- 3) 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)

FISCAL EFFECT: None.

COMMENTS:

The purpose of this bill: According to the author, "Speculators are exploiting a loop hole in the Ellis Act that allows them to buy a building and then immediately 'exit' the rental business through wholesale evictions of low and middle income tenants. Families, seniors and the disabled are losing their long-term homes. Ellis Act evictions have tripled in San Francisco in the last year. More than 300 units were taken off the rental market... Fifty percent of the evictions in 2013 were done by owners who had owned the property for less than one year before invoking the Act, the majority occurring during the first six months of ownership. SB 1439 would authorize San Francisco to adopt measures to mitigate the negative effects of speculators on the city's stock of affordable housing caused by a surge of Ellis Act evictions."

The Ellis Act: 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 and elderly and disabled tenants must receive one year's notice. 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.

Limited application: This is a district bill. Although 11 cities in the state have rent control, including Los Angeles, Santa Monica, San Jose, Oakland, and West Hollywood this bill only applies to the city and county of San Francisco. San Francisco arguably has one of, if not the most, competitive rental markets in the state. The expansion of the technology industry in San Francisco has expanded the demand for homeownership types of housing including condominiums and tenancy-in-common. According to the San Francisco Association of Realtors, the median price for a condominium or tenancy-in-common unit in San Francisco hit \$950,000 in January 2014, a 24.6% year-over-year jump, and surpassed the \$928,000 median price for single-family homes.

Exemption for small property owners: This bill would exempt small property owners from any restriction the city and county of San Francisco could place on rental property owners who have owned their rental property for less than five years from existing the rental market. Property owners who are "natural persons", own no more than two properties, and own no more than four residential units would not be subject to any limitations on "Ellising" their property based on how long they owned the property. "Natural person" is not defined in the bill but could be interpreted to limit the exemption to properties that are owned by an individual person. This would not include small properties that are owned by a married couple or a family trust. Setting up a living trust or limited liability corporation (LLC) is relatively easy, inexpensive, and often encouraged to avoid liability and insulate owners. In an effort to capture small property owners that may be made up of multiple family members, or situations where parents have formed a trust to ease inheritance of property, the committee may wish to consider defining natural person(s) to include an exemption for living trusts.

The committee may wish to consider whether owning one's own personal residence should be considered in determining his or her status as a small property owner. The committee may wish to make clear that an owner's personal residence should not be counted, as one of the two properties or four rental units, to meet the exemption.

Inherited properties: This bill would allow the city and county of San Francisco to require that all owners be "owners of record" of a rental property for five continuous years before seeking to

withdraw a property from the rental market. The committee may wish to consider that this could negatively impact a property owner that has owned the property for more than five years as an individual but then forms an LLC or trust and transfers ownership to that new entity. The transfer would trigger a change in the owner of record and could then prevent a property owner who has owned a property for more than five years from withdrawing it from the rental market. In addition, the committee may wish to consider how this would affect children who inherit rental properties in San Francisco. Should they be treated as new owners of record or should they be treated as their parents were if the parents owned the property for more than five years?

Arguments in opposition: According to opponents, the exemption for small property owners is too narrow. They contend that the majority of small property owners own their properties through family trusts, partnerships, or corporations for various legal and tax purposes. The exemption would not address this segment of small property owners. Opponents also argue that if SB 1439 becomes law rental property owners may no longer be able to sell a property even if they are losing money every month. They contend that the Ellis Act is used primarily by small property owners with duplexes and Victorians who no longer want to or can afford to stay in business. Opponents also argue that there are strong tenant protections in place that local governments can impose on owners who desire to exit the rental market, including relocation assistance to displaced tenants, specific notice periods, and deed restrictions. Opponents argue that SB 1439 would prevent owners and families who own small buildings from being able to move into their own units. While San Francisco does have an owner-move-in law, it is so stringent that the Ellis Act is the only way for an owner or his/her family to move into their building. Under the San Francisco owner-move-in-law, only one owner per building can move in, and owners must own at least twenty-five percent.

Arguments in support: According to the sponsor of the bill, Mayor Edwin Lee, "Since emerging from the Great Recession, the City has experienced a dramatic surge in Ellis Act evictions. In the last year, Ellis Act evictions have increased 86%, on top of an 81% increase in 2012. These evictions are not being carried out by long-term property owners, leaving the rental business to retire from being landlords. Instead, a small group of bad actors have become serial evictors, buying tenanted, rent-controlled buildings with the intention of invoking the Ellis Act and reselling a vacated building at a higher price....San Francisco faces an affordability crisis. Protecting the City's existing rental housing is only part of the effort. The City also needs to build more housing. That is why I put forward an ambitious seven-point plan that will build or preserve 30,000 new or rehabilitated homes in the next six years. Through this effort, an unprecedented amount of market-rate and affordable housing will be built to ensure that working class families can continue to call San Francisco home. My seven-point plan also provides a pathway for property owners to receive fair-market-value for their property while preserving rental housing. Under this program, property owners can sell their rental business to non-profit development corporation."

Related Legislation:

AB 1537 (Levine) is a district bill. This bill reduces the housing default densities from 30 to 20 for two cities and unincorporated Marin County until 2023. AB 1537 bill passed out of this committee 7-0 and is currently in Senate Transportation and Housing Committee.

SB 391 (DeSaulnier) would create a permanent funding source for affordable housing in the state through a fee charged on recorded real estate documents, excluding those filed at the time of

sale. SB 391 passed out of this committee 4-1 and is currently in Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

City and County of San Francisco, Edwin M. Lee, Mayor (sponsor)
Tenants Together (sponsor)
Accela
Advent
Affordable Housing Alliance
AFSCME
AfterCollege, Inc.
Airbnb
Airseed
Alliance for a Better District 6
Apcera
AppMesh Inc.
Asian Americans Advancing Justice – Asian Law Caucus
Asian Pacific Islander Legal Outreach
Asian Southeast Asian Society International Policy Institute
Asian Students Promoting Immigrants' Rights through Education (ASPIRE)
Automatic Labs Inc.
Babelverse, Inc.
Bay Area Council
Bernal Heights Neighborhood Center
Bill Sorro Housing Program
Box
Brian Webster and Associates
Calle 24 Merchants and Neighborhood Association
California Alliance for Retired Americans
California Association of Code Enforcement Officers
California Community Economic Development Association
California Labor Federation
California Music and Culture Association
California Rural Legal Assistance Foundation
California State Association of Counties
California State Association of Electrical Workers
California State Pipe Trades Council
Causa Justa::Just Cause
Causes
Central City Democrats
Chinatown Community Development Center
Chinese Chamber of Commerce
Christ Our Redeemer AME Church of Irvine
Cloudera
Community Housing Partnership

Community Tenants Association
Couchsurfing
Crate Labs, Inc.
Credit Karma
Crowdfund
Data Elite
Deloitte
Ecumenical Center for Black Church Studies
EchoUser
Episcopal Community Services of San Francisco
Events by Collette
Eviction Defense Collaborative
Expedia, Inc.
Exygy
Eyegroove
Fido Labs
ForageSF
Generator Lab
Getable, Inc.
Github
HandUp PBC
Homeownership San Francisco
Housing California
Housing Rights Committee of San Francisco
IB5k
iCloud
Inside
Jawbone
Jesse Miranda Center for Hispanic Leadership
Keen IO
Kite Solutions, Inc.
Lit Motors
Los Angeles Latino Chamber of Commerce
Lower 24th Street, Merchants & Neighbors Association
McElroy, Most Reverend Robert W., Auxiliary Bishop of San Francisco
Mesosphere Inc.
Mission Cultural Center for Latino Arts
Mission Economic Development Agency
Nashville West Studios
National Asian American Coalition
National Housing Law Project
Neighborland
Newsle, Inc.
Non-Profit Housing Association of Northern California
North Beach Tenants Committee
North of Market Business Association
Optimizely
Organizer
Path

Peers
Peerspace
PLAE, Inc.
Project Homeless Connect
QuickPay
Residential Builders Association
RivalMe Inc.
Salesforce
San Francisco Board of Supervisors
San Francisco Building and Construction Trades Council
San Francisco Citizens Initiative for Technology and Innovation (sf.citi)
San Francisco Community Land Trust
San Francisco Housing Development Corporation
San Francisco Immigrant & Legal Education Network
San Francisco Interfaith Council
San Francisco Labor Council
San Francisco Latino Democratic Club
Silicon Valley Bank
Social Bet, Inc.
Splice Vine
Square Trade
StartUpers
State Building and Construction Trades Council
St. Anthony Foundation
SV ANGEL
Tagged
Tenant Associations Coalitions of San Francisco
Tenderloin Housing Clinic
Tennis Round, Inc.
The Archdiocese of San Francisco
TinyCo
TMG Partners
TRAIL
Treasure Island Homeless Development Initiative
Twilio
Twitter
United Farm Workers
Urban Counties Caucus
WebTalk
West Bay Housing Corporation
Western Center on Law and Poverty
Western States Council of Sheet Metal Workers
Xoom Corp.
YELP
YouBetMe
Zackees, Inc.
Zynga
Private individuals

Opposition

Apartment Association of Greater Los Angeles,
Apartment Association of Orange County
Apartment Association, California Southern Cities
CalChamber
California Apartment Association
California Apartment Association (CAA)
California Association of Realtors
California Building Industry Association (CBIA)
Civil Justice Association of California
East Bay Rental; Housing Association
Individual rental property owners (4)
Individual San Francisco Realtors (33)
Lingsch Realty
Nor Cal Rental Property Association
San Diego County Apartment Association
San Francisco Apartment Association
San Francisco Association of REALTORS
Santa Barbara Rental Association
The Small Property Owners of San Francisco Institute (SPOSF) Petition (103 signatures)
Zacks & Freedman, P.C.

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