

# TENANT BUY OUTS

By Paul F. Utrecht

Our firm has long experience with Ellis Act evictions, which remains a very effective way for owners to obtain possession of multiple units. The Ellis Act enables TIC owners (many, if not most of whom were tenants) to own their own homes in the expensive San Francisco real estate market. There are, of course, some detriments to invoking the Ellis Act.

When the Ellis Act is invoked and the tenants in two units are evicted, the building is effectively precluded from converting to condominiums. With the advent of fractional loans, it is no longer necessary to convert TIC buildings into condominiums. However, there are still some advantages to condominiums and some owners prefer them for the simple reason of familiarity.

The Ellis Act requires a landlord to withdraw all of the units in a building from rental use. For example, if a 5-unit building is owned by four owners, they cannot let the tenant in the fifth unit remain as a tenant. In addition, the owners are prohibited from renting the units during the first two years after the Ellis Act is invoked. And, for the first five years, if a unit is re-rented, it must be rented at the rent controlled rate in effect when the Ellis Act was invoked.

In sum, there may be an effect on the value of the building as a result of invoking the Ellis Act. As a result, owners have, over the years, asked us to make efforts to buy out tenants. The received wisdom – from the Rent Board, the Tenants Union and tenant attorneys – has been that efforts to buy out tenants are violations of the Rent Ordinance because it prohibits a landlord from endeavoring to recover possession of a unit without just cause.

Happily over the years this firm has developed techniques that often help TIC owners obtain possession without using the Ellis Act. Our strategy typically involves our sending a letter to each tenant in the affected building which is carefully crafted to not only provide options for the tenant but also to afford the owners protection from tenant claims of wrongful eviction. Our letters usually provide a mechanism whereby the owners will be able to reach an agreement with each tenant pursuant to which the tenant is paid a sum of money in exchange for the tenant vacating the unit and giving up all rights either to return or to pursue any other remedies under the local rent control ordinance.

Now, many landlord lawyers are advising landlords to brazenly make buy out offers. There have been several recent cases that have made it less risky to make buy out offers. We continue to advise some caution in this regard. Of course, we will work with our clients to determine the amount of risk that they are willing to accept and tailor the approach to the client's

level of risk tolerance.