Guide to San Francisco owner move-in and relative move-in evictions

BORNSTEIN LAW

Owner move-in evictions and relative move-in evictions (OMIs/RMIs) permit property owners to recover possession of a tenant-occupied unit for use as their primary place of residence – or a relative's use where the landlord already lives in another unit in the building.

Owner move-in evictions (OMIs) and relative move-in evictions (RMIs) constitute a just cause under San Francisco's Rent Ordinance, but this comes with a host of caveats and obligations on the part of the owner.

Who can effectuate an OMI/RMI?

25% ownership interest or more in the property is required if the ownership was recorded after February 21, 1991.*

10% ownership is required if the ownership was recorded on or before February 21, 1991.*

*Domestic partners can combine their interests to achieve the required 10% or 25% interest in order to occupy a unit. The ownership interest must be that of a “natural person.” For landlording business structured as an LLC, Bornstein Law can transfer the LLC’s ownership stake to the individual and once the OMI/RMI is effectuated, then convert it back to the LLC. Property interest can be deeded to other individuals, for example, from a father to a son.

Transitioning tenants out of units through an OMI/RMI must be done in good faith, without ulterior motive, and with honest intent.

What this means, first and foremost, is that the owner or relative intends to occupy the unit as a principal place of residence for at least 36 continuous months.

Furthermore, if a comparable unit owned in the same building is vacant during the period of the notice terminating tenancy, the notice must be rescinded.

If, in fact, there is another vacant, non-comparable unit owned in San Francisco, it must be offered to the tenant who is being evicted.

Take your time, but hurry up.

The owner or their qualifying relative has 3 months to move into their newfound principal place of residence.

Is there acrimony in the rental relationship?

Generally speaking, an OMI/RMI is not that difficult so long as it does not appear retaliatory.

For example, first-time homeowners who merely want to live in the home they just purchased will likely go through the process of transitioning tenants out with little complication. They have no problematic history with the tenants.

Complications arise when there is a prior history of landlord-tenant disputes, or when it seems incredulous that the owner will actually move into the property.

Claiming good faith is simple, but it may be put to the test.

Raising your right hand under penalty of perjury and attesting to the San Francisco Rent Board and/or the court that the OMI/RMI is conducted in good faith and without ulterior motive is easy enough to do, but it can be challenged later on.

There is a natural distrust of these types of evictions, and it shows in the form of protections lawmakers put into place.

“Trust but verify” seems to be the operative term that regulators use to ensure that landlords do not displace a tenant under the guise of an OMI/RMI only to sell the property or raise the rent.

What, exactly, is acting in "bad faith"?

This can be a murky area, but the San Francisco Rent Board has delineated some possible indicators that the rental property owner has not complied with the letter or spirit of the law.

- The landlord times the service of the notice or the filing of an action to recover possession so as to avoid moving into a comparable unit, or to avoid offering a tenant a replacement unit;
- The landlord has failed to file the notice to vacate with the Rent Board;
- The landlord or relative for whom the tenant was evicted did not move into the unit within three months after the landlord recovered possession of the unit and then occupies the unit as that person's principal residence for a minimum of 36 consecutive months;
- The landlord or relative for whom the tenant was evicted lacks a legitimate, bona fide reason for not moving into the unit within three months and/or occupying the unit as that person's principal place of residence for at least 36 consecutive months;
- The landlord did not file a required Statement of Occupancy with the Rent Board;
- The landlord rented the unit to a new tenant at a higher rent than the displaced tenant would have paid had s/he remained in continuous occupancy;
- The landlord served a separate owner move-in eviction notice for a different unit and has not sought rescission or withdrawal of that notice;
- The landlord evicted tenants from multiple rental units in the same building within 180 days of the service of the owner move-in eviction notice; and
- The landlord completed buyout negotiations pursuant to Section 37.9E(c) with any other tenants in the same building where possession is sought.

FROM THE SAN FRANCISCO CHRONICLE

S.F. tenants made millions after suing landlords over bogus owner move-in evictions

Aside from criminal penalties for violating OMI/RMI rules, landlords can face colossal liability in civil courts. This article brings this point home, quite literally.

Read on →

2018 legislation authored by Supervisor Aaron Peskin made OMIs/RMIs highly regulated. Here are some highlights of the law.

37.9(a)(8)(v): Requires the landlord to attach a blank change of address form to an OMI eviction notice that the tenant can use to advise the Rent Board of any change of address.

37.9(a)(8)(v): Requires the landlord to include in an OMI eviction notice a declaration executed under penalty of perjury stating that the landlord intends to recover possession of the unit in good faith for use as the principal residence of the landlord or relative for a period of at least 36 continuous months.

37.9(a)(8)(vii): Requires the landlord to file a "Statement of Occupancy" form with the Rent Board within 90 days after the date of service of an OMI notice, and an updated Statement of Occupancy every 90 days thereafter until the landlord recovers possession, and then once a year for five years after recovery of possession of the unit.

37.9(a)(8)(vii): Requires the landlord or relative who claims to be occupying the unit as that person's principal residence to attach at least two forms of supporting documentation to the Statement of Occupancy to show that the unit is being occupied as that person's principal residence.

37.9(a)(8)(vii): Requires the Rent Board to send a copy of each periodic and annual Statement of Occupancy to the displaced tenant, or a notice that the landlord did not file the required Statement of Occupancy.

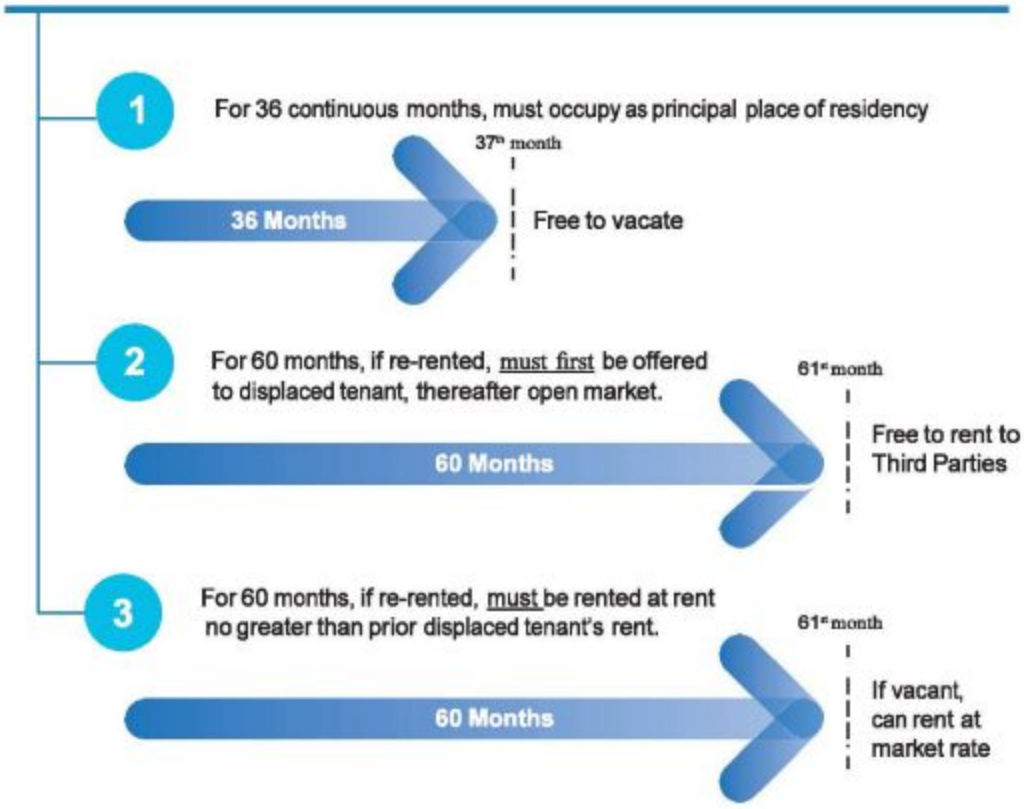
37.9(a)(8)(vii): Requires the Rent Board to assess administrative penalties on any landlord who fails to file a required Statement of Occupancy and supporting documentation – $250 for first failure, $500 for second failure and $1,000 for every subsequent failure.

37.9B(e): Requires the Rent Board to send a notice to the affected unit that states the maximum rent for the unit within thirty days after the effective date of an OMI notice, and to send an updated notice to the unit annually for five years thereafter.

37.6(k): Requires the Rent Board to transmit a random sampling of 10% of all Statements of Occupancy to the District Attorney on a monthly basis. Also requires the Rent Board to send the District Attorney a list of all units for which the required Statement of Occupancy was not filed.

37.9B(b)(2): Extends from three to five years the time period after an OMI notice during which a landlord who intends to re-rent the unit must first offer the unit to the displaced tenant. The offer must be filed with the Rent Board within fifteen days. The tenant has thirty days from receipt of the offer to notify the landlord of acceptance or rejection of the offer and, if accepted, forty-five days to reoccupy the unit.

For the visual types, here's a timeline.



Whenever a tenant is misplaced because of an OMI/RMI, relocation payments must be paid out, depending on the length of occupancy.

Certain vulnerable groups must be compensated even more if occupants have been residing in the unit for at least 12 months.

Be mindful of protected tenants

San Francisco, of course, has some of the most stringent protections anywhere. Some tenants considered vulnerable are afforded even more guardrails. Let's compartmentalize "protected" classes by a handful of categories.

Age: Tenants age 60 years and older who have resided in the unit for 10 years or more are given special protections.

Tenants with Disabilities: Tenants who are disabled and have occupied the unit for 10 years or more are considered protected tenants.

Chronic illness: Those tenants who are catastrophically ill and have resided in the unit for five or more years are likewise given unique protections.

School staff and school-aged children: San Francisco Ordinance 55-16 has catapulted school educators, school staff, and child care center employees into a protected class by banning certain no-fault evictions during the school year.

We've given an overview, but when it comes to protected tenants, we are venturing down a rabbit hole of complexity.

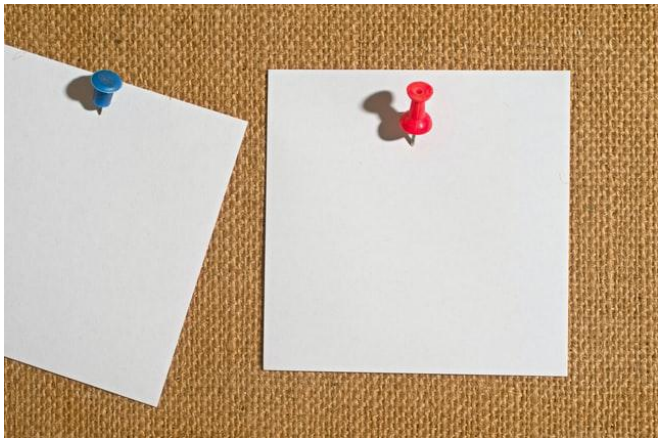
Anyone contemplating an OMI/RMI with a suspicion that there is a protected tenant is strongly advised to consult Bornstein Law to dig deeper and prepare for all contingencies.

Relocation Payments for Evictions based on Owner/Relative Move-in

[Rent Ordinance Section 37.9C]

Date of Service of Notice of Termination of Tenancy ("Eviction Notice")	Relocation Amount Due Per Tenant	Maximum Relocation Amount Due Per Unit	PLUS Additional Amount Due for Each Elderly (60+) or Disabled Tenant or Household with Minor Children
3/01/22 - 2/28/23	$7,421.00	$22,262.00	$4,948.00

The landlord is required to give all occupants of the unit written notice of relocation rights on or before the date of service of the eviction notice and shall also provide a copy of Ordinance Section 37.9C. Such notification shall include a statement describing the additional relocation expenses available for eligible tenants who are senior or disabled and for households with children. The landlord must file a copy of this notification with the Rent Board within 10 days after service of the notice, together with a copy of the eviction notice and proof of service upon the tenant.



Within 30 days of receiving a tenant's claim for the additional payment because of age, disability, or having children in the household, the landlord must inform the Rent Board in writing of the tenant's claim and whether or not the landlord disputes the claim.

However, the Rent Board does not have authority to accept or decide petitions regarding a tenant's claim for additional relocation expenses based on age, disability, or having children in the household. Such disputes must be resolved in another forum.

A word to real estate brokers and agents

With the vacancy rate so low in San Francisco, it is inevitable that you encounter buyers who are eyeing tenant-occupied properties. It is important to be transparent about the costs associated with transitioning those tenants out of the unit so that the added expenditures go into the equation of purchasing the property. Buyers should not encounter any surprises.

All too often, we have seen buyers who have just stretched their budgets for a huge mortgage and are excited to move into their new home, only to get deflated by finding out that they have to shell over thousands of extra dollars in relocation payments, pay Bornstein Law a retainer fee to usher the existing tenants out of the property, and wait a protracted period of time before they can actually gain possession of the premises.

If our office has to be the one to be the bearer of this bad news, your client will be furious with you. To avoid this awkward conversation, we recommend that you communicate the potential hurdles early on and if there is any ambiguity, introduce the client to our office.

There is nothing more we enjoy than making you shine as a knowledge-based real estate agent and elevating you in the eyes of your clients.

If you are representing a seller, it may be ideal to transition the tenant out of the unit before marketing the property for sale. We know that, generally, a vacant property will sell for more than a tenant-occupied one.

Bornstein Law stands ready to assist in accomplishing the goal.

Many nuances apply.

Contact the firm built for rental property owners.

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