



# Guide to Tenant Buyout Agreements

**BORNSTEIN LAW**





# Not just cash for keys.

In a tenant surrender of possession agreement, the tenant agrees to voluntarily vacate in exchange for compensation, a rent waiver, return of the security deposit, or any mixture of incentives. Yet it is not just cash for keys, a term coined during the foreclosure crisis.

A properly prepared tenant buyout agreement removes any legal residue - the tenant agrees to waive all legal claims that may arise from the tenancy, and these include claims the tenant may know about, as well as claims the tenant doesn't even know about.

For example, six months after moving out, the tenant develops a respiratory condition from a mold infestation.

So, landlords are not merely paying for keys. They are paying for a complete release of claims.

Merely giving someone cash to move out will not shield a landlord from liability.



## We understand the benefits of a vacant unit.

When the tenant voluntarily vacates the premises, rents can typically be raised. We also know that when properly staged, a vacant building will sell for more money than one that is tenant-occupied.

Yet the property owner's desire to have a vacant unit is not a "just cause" reason to evict.

The decision to go out of the rental business and avail the Ellis Act is a consequential one. Owner move-in evictions and relative move-in evictions can come with a host of obligations such as continuously residing in the unit for a fixed period of time and re-renting the unit out at the same rate as prior to the OMI/RMI.

For landlords in rent-controlled jurisdictions, then, tenant buyouts may be the only means to effectuate a vacancy.

Throughout the long, dark winter of COVID-19, the public policy was to keep people housed and so there were a deluge of tenant protections and eviction moratoriums issued at every level of government.

There is no government edict, however, that prevents two private parties from entering into a contract.

**Because a tenant buyout agreement is a voluntary agreement, the optics are good.**

This is a meeting of the minds where the landlord and the tenant enter into a heart-to-heart discussion and the tenant leaves on his or her own volition.

It does not strike as heavy-handed or retaliatory. And it gives landlords maximum flexibility.

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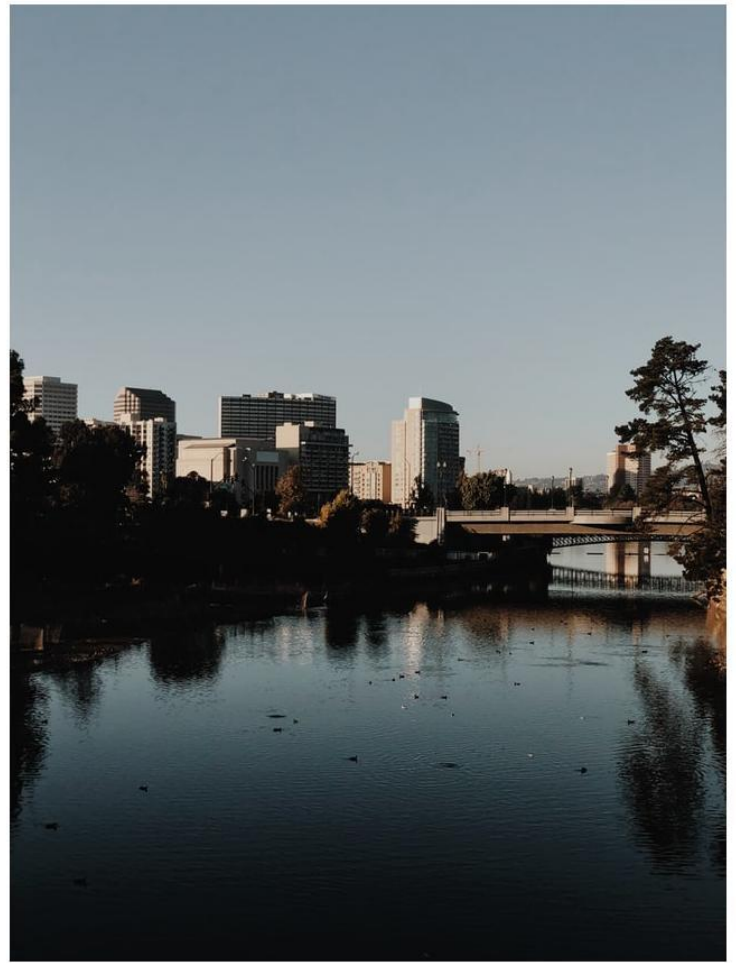
items our office needs to provide clients with a draft surrender of possession agreement. We need to glean the following information:

1. Names of Owner (s)
2. Names of Tenants and/or Occupants
3. Address of Rental Unit
4. When are the tenants vacating the unit?
5. How much are you paying them?
6. When are you going to pay them (upon signing settlement agreement or upon giving the keys to you?)
7. Are the tenants going to continue to pay rent for the duration of their time in the rental unit, or is the rent waived?
8. Are you returning the security deposit according to law, or are the tenants forfeiting the security deposit?

**48 hours is typically the turnaround time we need to prepare the agreement.**







## **San Francisco, Oakland, and Berkeley have its own set of rules to follow.**

In these locales, there are disclosure requirements that must be followed to the letter. Notably, there is a cooling-off period that allows tenants to change their minds and rescind the contract after it is inked.

In some respects, Oakland's rules surrounding tenant buyout agreements are modeled after San Francisco, but Oakland also requires tenants to be aware of relocation payments that tenants are entitled to for no-fault eviction.

Interestingly, while Berkeley is normally considered to have an onerous regulatory regime when it comes to rent control, we find its requirements on tenant buyout agreements to be relatively lax.



## San Francisco

Even before the topic of a tenant buyout agreement can be broached, the tenant must sign paperwork certifying that he or she is made aware of their rights. That's right - even before the landlords opens their mouth, there must be disclosures made. It doesn't stop there.

The landlord must file a declaration with the Rent Board to attest that this step was followed. If the parties reach an agreement, the tenant has 45 days to rescind.

## Oakland

Oakland wants tenants to recognize that if the landlord's goal is to effectuate a vacancy, there may be a more lucrative bounty in the form of relocation payments; if a tenant buyout agreement is declined and the landlord persecutes a no-fault eviction, the tenant would be entitled to money. Landlords must apprise the renter of the right to consult with a lawyer and even if an buyout agreement is reached, the tenant has 25 days to do an about-face and rescind the agreement. However, this 25-day window can be negotiated down to 15 days as long as it is contained in the body of the agreement. Once inked, the agreement must be filed with the Oakland Rent Board.

## Berkeley

Berkeley landlords must apprise tenants of the right to counsel and make it clear that retaliation is prohibited in the event the buyout offer is declined. The tenant must also be notified of their right to consult with the Rent Board in weighing the option of accepting a buyout agreement or not. If the parties enter into an agreement and the tenant has not exercised his or her right to rescind after 30 days, the contract will have to be filed with the rent board no later than 60 days from the date the agreement is executed.





As for the rest of California that does not have local rules governing tenant buyout agreements, landlords can begin a conversation with the tenant about buying them out without disclosures.



## Some strategy in coming to an agreement

Bornstein Law can draft a code-compliant agreement, and this is not all that difficult. The concern we have, and the real hurdle, is how to bring landlords and tenants to the table and strike a deal that makes sense.

Whenever possible, our strong preference is for the landlord himself or herself to be the one to broach the topic of a tenant buyout agreement and engage in any negotiations. This is because whenever an attorney gets involved in the discussion, it is entirely possible that the tenant gets spooked and reaches out to an attorney of their own.

They may do a Google search of our law firm, recognize that we represent rental property owners, and then seek out their own counsel. Act two: we may get a call from the tenant's attorney that goes something like this:

"Mr. Bornstein, I'm representing John Doe and will be negotiating on his behalf in transitioning him out of the rental unit. John is happy to voluntarily vacate the property in exchange for \$95,000 and a six-month rent waiver." Some sort of outrageous offer like that.

So, we'd much rather the landlord have a heart-to-heart conversation with their renters, preferably in a face-to-face meeting in a friendly setting like a coffee shop.

We do recognize that some landlords, however, are a bull in a china shop and the rental relationship is so acrimonious, it is not possible to have a constructive dialogue.

In these instances, Bornstein Law will handle the negotiation. Keep in mind that although we have a flat fee to draw up the paperwork for a perfunctory tenant buyout agreement, our firm charges an hourly fee when one of our attorneys are the one to interact with the outgoing tenants.

## Having a leveraged conversation

All too often, landlords desiring to transition a tenant out of the unit through a tenant buyout agreement will open the conversation with something like, "I have some disclosures for you to sign, can we get together for you to sign them, then we can talk?" This is a non-leveraged discussion.

Let's give some examples of a leveraged discussion.





“John, I was thinking about selling the property to move closer to my daughter in San Diego. I don’t know what the future may hold with the new owner, but I’d like to sit down and explore some options.... You have been a fantastic tenant, and so I just wanted to give you the heads up. Can we grab a Starbucks?”

Conversely, there may be an undesirable tenant who the landlord wants to transition out of the unit, but does not want to incur the expense of litigation and wait for an over-clogged court system to evict the rogue renter. The landlord may enter into a conversation that goes something like this:



“Jane, I’m very disappointed in the continuing raucous parties in your apartment. There have been complaints from other residents, and the police have now shown up twice. Before I commence an eviction action on the grounds of a nuisance, I’d like to talk to you about some other options and see if we can strike a win-win opportunity and come up with a dignified solution. Can we meet up later this week?”



“John, there’s been quite a lot of rent debt that has accrued during the pandemic. My first inclination is to seek this debt in court, but I’d really like to avoid the whole time and aggravation of going to court, and avoid any negative consequences for you, as well. There are some other options that come to mind. Can we get together so I can bounce them off of you?”



“Jane, there has been a lot of damage to the property. Drains have been clogged with foreign objects, there was that broken window, the carpet has burn marks, there’s crayon marks on the wall, the list can go on. As a landlord, I have every right to charge you for this or deduct from the security deposit. But I’d like to talk to you about finding a better solution. Can we get together to discuss some options?”



“John, I have repeatedly told you not to smoke marijuana in the apartment. It’s a violation of the lease. The tenant downstairs has breathing problems and is disturbed by the smoke permeating in her rental unit. I have given you ample notice to quit this behavior. I have every right to escalate this matter and pursue an eviction, but I think both of us don’t want to be dragged into that. I have another idea I’d like to chat about in person. Can we meet?”

**Get any requisite disclosures signed.**



## **Two fundamental questions:**

### **Are there no convenient or legal means to evict?**

A tenant buyout agreement may be the only means to transition a tenant out of the rental unit if done ethically, properly, and in good faith.

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### **Is the time, expense, and aggravation worth pursuing an eviction action?**

Going to court may be attractive or not. A tenant buyout agreement may be prudent to avoid attorneys' fees, the morass of a trial, and having tenants' attorneys defend against the action.





## **Our primary goal is compliance. Not enforcement.**

We don't necessarily want to spell out the consequences of violating the tenant buyout agreement in the body of the contract. Of course an agreement can be enforced, but we don't want to educate the tenant on how to break the contract. Our strong preference is to get the tenant emotionally locked into it and recognize the value of a new beginning.





## When to pay the money to vacate?

*We defy the conventional wisdom by recommending that some money is paid upfront to emotionally lock the tenant into the agreement and give them an opportunity to find alternative housing.*

Many sensible landlords will argue that money should exchange hands only after the tenant vacates and turns over the keys. Yet the whole goal of a tenant buyout agreement is to motivate the renter to envision a new chapter in their life and have the means to move on.

Once a tenant buyout agreement is brokered and the landlord parts with some money to begin the process, there is naturally a concern that the tenant may pocket the money and never leave the rental unit. They may rescind the agreement or they may not move out on the date that was agreed upon.

From our hard-won experience, these concerns are misplaced. The overwhelming majority of tenants fulfill their obligations in a buyout agreement. If the tenants change their minds, it's normally because they have consulted with an attorney and realize they can get more money, so a counter-offer is made. When they do not move out, it's normally because they haven't had enough time to find a new abode.

Yet in our estimation, out of 100 buyout agreements reached, there are only one or two instances when tenants do not live up to their obligations.



## A voluntary vacancy is just that - voluntary.

Nothing compels the tenant to entertain a buyout offer. It's not rare that the tenant will say they are content with their current living arrangement and the enduring connections they enjoy.

If they say that they are happy with their studio apartment overlooking People's Park and they want to live there for the rest of their lives, they are in fact correct, unless a "just cause" reason to evict can be found.



Communication can be shut down quickly, and no means no. Landlords cannot press the tenant with repeated attempts to enter into a buyout agreement, as this will surely be viewed as tenant harassment.

## What is the typical dollar amount paid out in a buyout agreement?

The answer is that it is all across the board. Our office has been involved in buyout agreements as simple as a waiver of one months' rent and a deal that came with a \$200,000 bonanza for the tenant.

There was quite a bit of media attention over the rare bargaining power tenants have when \$469,563 was doled out to four tenants in exchange for vacating a multi-family building in Presidio Heights which was then sold for \$1.4 million. According to SocketSite, the largest payout to an individual tenant was \$225,000 in 2021.

However sensational, these windfall payouts are not the norm. Our steadfast goal is to accomplish the goal of a vacancy as inexpensively as possible taking into account a host of factors. A surefire way to secure a tenant buyout agreement is to give the tenant a lot of money. But that is the painful solution. Bornstein Law would like to see our clients take a more strategic approach instead of dangling an abundance of money.



## Odd bedfellows?

Tenant buyouts are published in a public database, and it turns out that advocates for both landlords and tenants do not like having the details of their business being broadcasted out for the rest of the world to see. Especially tenants who are in debt and do not want creditors or the government to know they just came into money.

We can't help but draw a comparison with calls for rent registries that raise privacy concerns. There are objections from both camps.

**Helping you think smartly and strategically about your real estate investments.  
For informed advice, contact the firm built for rental property owners and the  
professionals who serve them.**

Bornstein Law is dedicated to helping you powering through your real estate challenges and resolving thorny landlord-tenant disputes as quickly, efficiently, and cost-effectively as possible, taking into account time, risk, and attorneys' fees.

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