

SUBLEASING DEVELOPMENTS: VACATION RENTALS; - CHILDREN AS ORIGINAL OCCUPANTS

1. Vacation Rentals

Changing social mores, the internet, social media and skyrocketing rental rates have probably all contributed to the growth of people renting out their homes and apartments to tourists.

While Landlords might understand the impetus for such activity, most would prefer not to have tenants renting their units to strangers on a short term basis. They obtain no financial benefit from the activity and yet remain responsible if there are any adverse consequences from a vacation rental. These could include: security risks (no one has done a background check on such visitors, visitors will have keys to all doors, there is no check on having all keys returned); behavior issues; and unintended consequences such as bedbugs or other critters brought in by the travelers.

San Francisco has joined a number of other cities and counties in passing legislation regulating such activity. San Francisco's Ordinance can be found in both the Administrative Code and the Planning Code.

What is important for landlords to know is that if their rental agreement contains a prohibition on assignment and subleasing, the landlord may prohibit such conduct and take appropriate action against a tenant that undertakes such activities. If the rental agreement allows subleasing with the landlord's consent, there is ample justification to refuse consent to short term subtenants.

If a landlord finds out that a tenant is subletting his/her unit to paying guests and the governing rental agreement contains a clause prohibiting that conduct or the landlord's prior consent is required, then the landlord should take prompt action. That action should either be a letter warning that the conduct violates the rental agreement and will be grounds for eviction if it occurs again or the service of a formal 3 day notice to perform a covenant or quit.

It has been our experience that either one of the options works to curb the conduct.

Some property owners have taken the pro-active approach of sending a letter to each tenant advising that the property owner will not consent to any such sublease because of the risks. The San Francisco Apartment Association has prepared such a letter for its members. Others have used Notices Changing the Terms of the Tenancy to specifically impose a prohibition on any such short term rental for consideration. This removes any argument that the tenants were just having "guests" stay over.

2. Adult Children May Succeed to Parents' tenancy.

In Mosser Companies v. San Francisco Rent Stabilization and Arbitration Board, decided

January 21, 2015, the California Court of Appeal held that a son who moved into an apartment with his parents at the age of 13 continued to have rent control protection at the age of 23 when his parents moved out and he remained. The Court applied the language of the Costa Hawkins Rental Housing Act (Civil Code Section 1954.53) literally to find that the son at the age of 13 was a permitted “occupant” of the rental unit when the parents first entered into the rental agreement. The language of Costa Hawkins does not specifically require that the “occupant” be a party to the rental agreement, rather that the occupant took possession of the unit “pursuant to” the rental agreement.