

On 30 years of practice under SF's Rent Control Ordinance

By Nancy C. Lenvin

In 1978, just as I was opening my own law firm, San Francisco first adopted rent control. It was a simple, relatively short ordinance, which created a "stabilization" system rather than the rigid rent controls found in places like Berkeley. Owners and tenants could agree to rent increases beyond the suggested 7% cap, the City's Real Estate Department amortized capital improvement costs, and the Rent Board allowed new owners to recoup significant costs incurred when apartment buildings were purchased. Best of all, the regulations were simple and clear enough that many landlords could participate in proceedings at the Rent Board without a lawyer.

Little by little, year by year, the ordinance has put more limits on landlords. For example, many operating costs can no longer be passed on to tenants; and, those increases require a paper-heavy, cumbersome process at the Rent Board that takes months and months. All capital expenditures are no longer recoverable. Even when the landlord is required to comply with local building and safety regulations, rent reductions must be given if the compliance (as in removing storage of personal property in a garage that does not have sprinklers) results in a loss of a "housing service." Moreover, the eviction restrictions have become increasingly broad and expensive making it more difficult for owners and their families to move into apartments in buildings that they own. But perhaps most infuriatingly, the Ordinance and the Rules, now the size of the income tax code, are more often than not difficult to understand and difficult to apply. In my heart of hearts, while I know that the ordinance would pass constitutional muster in a global attack, I still believe there are individual owners who are not getting a proper return on their buildings. A few actions by a courageous few might change the practice for all.

Such an attack is not the only avenue that owners could pursue to maximize returns on rental properties. There are significant benefits that are possible from a successful Rule 1.21 petition or where a Costa Hawkins rent increase is appropriate. Both in essence allow the rent to be raised to current market levels if the original tenant whose rent was controlled no longer makes the rental unit his/her principal residence. In addition, some owners are with appropriate legal assistance maximizing returns by selling portions of their properties to owner occupiers and creating tenancy in common interests.

The combination of changes in the housing market coupled with changes in the law make the representation of owners of rental housing a challenging and often rewarding one.