

**Subletting, Assignment, Roommates,  
Rule 6.14, and Costa-Hawkins**  
by Michael C. Hall, Attorney at Law

San Francisco's rules governing subletting, assignment, and roommates are somewhat complex, so before we attempt to sort them out, let's define a few terms:

A **sublet** is an agreement between a "master" tenant and a subtenant to sub-rent a portion of the unit, or an agreement between a master tenant and a subtenant to sub-rent the entire unit for a defined (usually short) term. The master tenant retains all rights and obligations under the "master" lease, including the obligation to pay rent to the landlord. There is no direct relationship between the landlord and the subtenant. The subtenant pays rent to the master tenant, and the master tenant is the subtenant's landlord.

An **assignment** is an agreement to transfer the lease from one person to another. When a property is sold, the landlord assigns the lease to the new owner, or when a commercial tenant sells the business, he assigns the lease to the buyer. Similarly, a residential tenant might assign the lease to a new tenant/occupant. After doing so, there is a direct relationship between the landlord and the new tenant (the assignee) who has stepped into the shoes of the departed tenant (the assignor). The assignee pays rent to the landlord, and the assignor has stepped out of the relationship.

**Roommates** share a dwelling, but their legal relationship to the landlord depends upon the terms of their lease. They may be co-tenants under a lease, in which case they have a direct tenancy relationship with the landlord, and are jointly obligated to pay the entire rent. Or, they may be subtenants who pay rent to the master tenant. Roommates who first occupied as subtenants may become cotenants if the landlord accepts direct rent payments from them, even if they have not signed the lease.

A written lease may prohibit or restrict assignment, subletting and other changes in occupancy. If there is no written lease, or if the lease does not address these issues, the lease may be freely assigned to new tenants and the unit may be sublet without the landlord's consent. (Exception: an oral prohibition or restriction may be enforceable.) Under rent control, landlords seek to restrict assignment, subletting, and changes in roommates so that a unit which might otherwise become vacant and bumped up to market rent is not passed on to new occupants under the same, rent-controlled lease.

Under California law, landlords may generally prohibit or restrict assignment and subletting in residential leases. They may also restrict occupancy of the unit to the original tenants, provided that such restrictions are not unlawfully discriminatory. Written lease forms in common use today restrict occupancy of the unit to the original co-tenants and absolutely prohibit subletting and assignment, or require the landlord's prior written consent. Any such absolute prohibition on subletting or assignment must be set out in bold face type and separately initialed, or otherwise adequately disclosed to the tenant on signing the lease.

If the tenant violates the anti-subletting clause of the lease, the landlord's remedy is to serve a 3-day notice, followed by an eviction lawsuit. ***However, the landlord's right to enforce such provisions with eviction has been limited under the SF Rent Ordinance and Rent Board Rules.*** Under these provisions, the landlord may not refuse a tenant's request for a change in occupancy (i.e., bringing in a new roommate) as long as an original tenant will remain and the number of occupants will not increase. An exception applies if the new occupant is a close family member, in which case, the household may increase up to the legal occupancy limit for a unit of that size. The landlord may refuse consent to a financially unqualified occupant, but only if he/she is obligated to pay rent to the landlord.

Despite the foregoing, tenants must still comply with lease provisions and attempt to obtain the landlord's consent, prior to changes in occupancy. If a new occupant moves in without notice to the landlord, the tenant and other occupants are subject to eviction. However, many consider it inappropriate to evict an entire household simply because of a change in occupancy, even if it constituted a breach of contract. The Rent Board enacted Rule 6.14, enabling landlords to disregard such a breach and preserve the right to raise rent to market value when the last original tenant has vacated, as if the unit had become vacant. Similarly, under California's Costa-Hawkins Rental Housing Act, landlords may raise the rent to market value to lawful subtenants or assignees when the last original tenant has permanently vacated.

### **What You Need to Know About Rule 6.14 and the Costa-Hawkins Act**

Rent Board Rule 6.14 allows landlords to raise rents to market value after the last original tenant has vacated the unit, provided that they have preserved this right by serving a written 6.14 Notice to the new occupant. Thus, under the rule, landlords may allow changes in occupancy but raise the rent to market value after the unit has turned over to subsequent occupants.

### **When to Serve a 6.14 Notice**

To take advantage of Rule 6.14, you must give any subsequent occupant a written notice stating that when the last of the original occupant(s) vacates the premises, a new tenancy is created for purposes of determining the rent under the Rent Ordinance. The notice must include a complete copy of Rule 6.14 and must be given to the subsequent occupant *within 60 days* after the landlord first learns about the occupancy. It is good practice to preserve written evidence of the date that you learned of the subsequent occupancy and the date upon which the 6.14 Notice was given. Many landlords require the subsequent occupant to date, sign, and return the notice. Alternatively, the 6.14 Notice may be served in the same manner as a 3-Day Notice (personal delivery or posting a copy at the premises and mailing another copy by first class mail).

You may waive the right to raise the rent under Rule 6.14 by creating a tenancy agreement directly with the subsequent occupant (e.g., by accepting rent), by failing to raise the rent promptly after learning that the original occupant is vacating, or by failing

to re-serve the right to raise the rent under Rule 6.14 *within 90 days* after receiving written notice of the subsequent occupancy.

### **The Costa-Hawkins Alternative**

Tenants often dispute Rule 6.14 rent increases on procedural or factual grounds, e.g., that the notice was not timely given, not properly given, or was waived. In 1995, an alternative was created under the Costa-Hawkins Rental Housing Act. Costa-Hawkins generally banned strict vacancy rent control such as existed in Berkeley and Santa Monica in favor of the less restrictive type of rent control like San Francisco's, and banned rent control for new tenancies in single-family dwellings (with limited exceptions).” In addition, Costa-Hawkins allows landlords to raise rent for lawful subtenants or assignees who did not reside in the unit prior to Jan. 1, 1996, after all of the original occupants have permanently vacated. In contrast to Rule 6.14, Costa-Hawkins does not require service of any written notice to subsequent occupants. For this reason, Costa-Hawkins rent increases are less vulnerable to attack on procedural or factual grounds, and many landlords have come to prefer Costa-Hawkins over Rule 6.14.

Subsequent occupants have challenged Costa-Hawkins rent increases by claiming that the landlord created a new tenancy agreement with them, and thus they are not subtenants or assignees. Occupants might argue that they became tenants when the landlord has accepted a rental application from them and allowed them to remain in the unit, even though they did not directly pay rent to the landlord. Although such arguments may lack merit, they can still result in costly dispute resolution in court or at the Rent Board. For this reason, some landlords refuse to accept applications from prospective new occupants and treat them as complete strangers even though the tenant has requested approval for the change in occupancy as may be required under the lease or the Rent Ordinance. Landlords who follow this practice lose the opportunity to obtain identity and credit history information about subsequent occupants. On the other hand, some landlords prefer to know with some certainty who is actually occupying the unit and to have identity and credit information about subsequent occupants so that they may be held legally responsible. Since some tenants attempt to conceal moving out so that the landlord will not raise the rent to the subsequent occupants, at times some detective work is necessary. It is easier for the landlord to discover that the tenant has permanently vacated if he or she has verified identification of all subsequent occupants.

To walk the line between these competing concerns, some landlords respond to tenants' requests for approval of new occupants by accepting a completed questionnaire—not a “rental application”—from the prospective new occupant, and then serving a 6.14 Notice to serve as a back-up to a Costa-Hawkins rent increase. The subsequent occupant should be clearly characterized as a subtenant, and all other correspondence concerning the terms of the tenancy should be directed only to the tenant. For assistance with these issues, landlords should consult an experienced attorney or property manager.

*Michael C. Hall is a San Francisco attorney specializing in contract, real estate, land use and zoning, landlord/tenant, and elder law. He may be contacted at*

*[mhall@mhalllaw.com](mailto:mhall@mhalllaw.com). Reprinted with permission of SPOSFI. © 2008. Michael C. Hall.  
All rights reserved.*

*Reprinted with permission of the Small Property Owners of San Francisco Institute (SPOSFI) News. For more information on becoming a member of SPOSFI or to send a tax-deductible donation, please visit their website at [www.smallprop.org](http://www.smallprop.org) or call (415) 647-2419.*