

Legal Q & A
By Richard Beckman

Question 1: I am thinking about buying a 4-unit apartment building in San Francisco, but want to make sure I can convert the apartments to condo units. How can I be sure I can do this?

Answer 1: Because the rules governing SF condominium conversions are very complex (lottery, protected tenants, lifetime ban on conversions based on eviction history...), and change frequently, the best advice in response to your question is to strongly recommend that you research the details of your particular transaction before you remove all contingencies. The easiest way to learn whether you can achieve your goal of condo conversion is to consult with someone very knowledgeable about the process. While such person is generally an attorney with experience in the field, it does not have to be. A knowledgeable real estate agent may be able to answer your questions as well.

Question 2: I am pretty sure I had a written lease with my tenant, but I can't find it. Does that mean I only have a verbal month-to-month agreement?

Answer 2: Not necessarily. Just because you don't have a copy of the lease, it does not mean the tenant does not have his or her copy. If so, that would establish the terms of the written rental agreement. The easiest solution would be to ask your tenant if he or she has a copy of the lease. If one is produced, and it appears genuine, then you have your lease. If the tenant denies that a written lease ever existed, and you have no evidence to the contrary, then you will most likely be deemed to have a verbal month to month agreement, for the amount of the rent each month.

If you are not in a rent controlled city, such as San Francisco, Berkeley or Oakland, you are generally entitled to change the lease after having given 30 days' written notice of the changes. You can send the tenant an entirely new lease with notice that the lease will become the agreement between the parties after 30 days, and if the tenant remains in possession after the 30 days and pays the rent, she will be deemed by law to have accepted the new terms.

If you are in a rent controlled city, however, changes to rental terms are subject to restrictions and should be done only after review of the facts by someone familiar with those restrictions.

Question 3: Who changes the smoke detector battery, the landlord or the tenant?

Answer 3: It always amazes me when I get questions like this. It would never occur to me that this could present a problem, but it comes up now and then. The short answer is, the landlord. The long answer is: According to Health and Safety Code Section 13113.7, the owner of each rented dwelling unit "shall supply and install smoke detectors in the locations and in the manner set forth in the manufacturer's instructions, as approved by the State Fire Marshal's regulations." In the case of apartment complexes and other

multiple-dwelling complexes, a smoke detector shall be installed in the common stairwells. An owner or the owner's agent may enter any dwelling unit, efficiency dwelling unit, guest room, and suite owned by the owner for the purpose of installing, repairing, testing, and maintaining single station smoke detectors required by this section. Except in cases of emergency, the owner or owner's agent shall give the tenants of each such unit, room, or suite reasonable notice in writing of the intention to enter and shall enter only during normal business hours. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the contrary. The smoke detector shall be operable at the time that the tenant takes possession. The apartment complex tenant shall be responsible for notifying the manager or owner if the tenant becomes aware of an inoperable smoke detector within his or her unit. The owner or authorized agent shall correct any reported deficiencies in the smoke detector and shall not be in violation of this section for a deficient smoke detector when he or she has not received notice of the deficiency."

However, as the landlord has a vested interest in insuring a working smoke detector is in the unit, she could let the tenant know that she follows the fire department's standing recommendation that the battery in the smoke detector should be changed twice a year, at the same time as clocks are reset in the spring and the fall (nothing fire-related to the recommended change dates, but the clock-change serves as a mental trigger to actually do it). Of course, the landlord would need to give proper notice of a planned entry of the purpose of changing the battery.

Question 4: Can I send a notice demanding rent when there is a Building Inspection Department Notice of Violation outstanding over 35 days on the premises?

Answer 4: Short answer, No.

Question 5: I am one of four owners of a duplex in Oakland. One of the other owners moved his mother-in-law into one of the units. I would like to move into the unit currently occupied by the other owner's mother-in-law, but I don't know if there is a lease in place and the other owner has refused to provide any such information. I would like to know what my options are.

Answer 5: I know it sounds suspicious when the answer to these write-in questions always seems to be 'consult a qualified attorney or other specialist,' but often that is the only sound advice a column writer can reasonably give. Your question implicates many legal issues, from the rights of a tenant (who is related to an owner), to the duties one co-owner owes another, to your rights to occupy one of the units, vacant or occupied. Generally speaking, even though one co-owner has the right to rent a unit in a co-owned building, and must account for all income received, it is a bad idea. The co-owner who did not rent to that tenant would not be permitted to terminate that tenancy, and there may be eviction restrictions in place that would prevent even the co-owner who rented the unit to the tenant from terminating the tenancy unless he had 'just cause.' There is also an issue of 'ouster' since the non-renting owner would no longer have an unrestricted right of access to the co-owned property, which she otherwise is entitled to. The very idea of co-

owners 'fighting ' over who is entitled to rent or occupy a unit is the strongest argument in favor of the 'TIC Agreement' you may have heard of. A TIC agreement is simply a contract entered into by the co-owners that spells out each owner's rights against other owners. It is, as you might imagine, best done before entering into the co-ownership arrangement, but it can be done afterward and still be effective.

Richard Beckman has been practicing landlord-tenant law for over 19 years, primarily in rent-controlled jurisdictions such as San Francisco, Oakland and Berkeley. He can be reached at 415-495-8500; fax. 415-495-8590 or by visiting www.BMDLLP.com