

SACRAMENTO REPORT

By Greg McConnell

INTRODUCING THE McCONNELL GROUP

We are pleased to announce that The McConnell Group and AOA have formed an agreement to provide legislative and political consulting for AOA members. This new service will reach over 100,000 property owners per month.

Greg McConnell heads The McConnell Group. He has worked on landlord/tenant regulatory issues for the last 25 years. During the early 1980's, Greg McConnell was the chief executive officer of rent control programs in Washington, D.C and Berkeley, California. In 1987, realizing that rent control was counterproductive to the stated goal of helping to provide and maintain decent rental housing, Greg left the city of Berkeley and formed The McConnell Group. Since that time he has emerged as one of the nation's top experts on rental housing regulatory policies.

The McConnell Group has been involved in every major legislative and political effort to pass rent control reforms and defeat adverse regulatory policies in California since 1987. Our signature accomplishment was the 1995 passage of the Costa Hawkins Rental Housing Act that provided for vacancy decontrol of rents in rent-control cities as well as permanent exemptions from rent control for new construction after 1995.

In our new relationship with AOA, we look forward to working with an army of property owners to protect against regulatory proposals that would take away your property rights and destroy the rental housing industry. For more information on The McConnell Group please visit www.themcconnellgroup.com.

MEGAN'S LAW

In an effort to protect Californians from sexual predators, the legislature last year amended Megan's Law to allow easy access to the list of Registered Sex Offenders (RSOs) by posting their identities, including their addresses, on the Internet. One of the by products of this new procedure is that the public now has more information on the proximity of RSOs to their homes and children, and many tenants claim that they are frightened to know just how close they are.

We have anecdotal evidence that some owners have received demands from their tenants that they evict RSOs who live in their buildings. If not, these tenants have threatened to void their leases and move to protect themselves and their families from predators. It has been predicted that activist tenant attorneys may go to the next step and sue owners who do not evict claiming that their failure to do so violates an obligation to provide tenants with safe surroundings.

The problem with existing law is that it is unclear whether owners have the right to screen tenants to determine if they are RSOs and/or to evict such people who may be tenants in their apartments. Existing law provides, "A person is authorized to use information disclosed pursuant to this section (Megan's Law) only to protect a person at risk." However, it further provides that "Except as authorized under paragraph (1) (the section referred to above) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited: (G) Housing or accommodations."

To the extent that owners are prohibited from using Megan's Law to deny housing accommodations to RSOs, it follows that they should have no liability for failing to do what the law prohibits them from doing. However, given the liabilities that courts regularly impose on owners for failing to do a variety of things that laws prohibit (or prevent) them from doing, owners are not confident that they will be protected.

Faced with this conundrum, some owners advocate pushing for amendments to the law that specifically authorizes owners to screen for RSOs and to evict tenants who are on Megan's Internet list. Other owners question the wisdom of creating the right to screen and evict. They argue that along with that right comes the duty to do so and failure to act will put them in jeopardy of being sued.

As owners review options to address their concerns, they will have to carefully weigh the benefits and problems associated with different approaches. Most owners do not oppose the stated goal of Megan's Law which is to increase the public's ability to protect itself from sexual predators by providing easy access to information about where these people live. However, owners must guard against the unintended consequence of making owners responsible for the conduct of predators when owners may be prohibited from taking action to exclude such people from their rental properties.

This will be a very difficult issue. In order to get concerns addressed by the legislature, owners will have to be able to prove that Megan's Law is having a significant adverse impact. Owners will need proof that they are experiencing problems with the law and that more protections are appropriate.

I encouraged owners to contact members of the California Assembly and Senate that represent their districts and provide information on how the law impacts the operation of their properties. To find information about your Assembly Member or Senator, please visit www.leginfo.ca.gov/yourleg.html

More Tenant Legislation

The tenant lobby plans to introduce legislation on 60-day notices and the Ellis Act. The proposal for 60-day notices would permanently require 60 days notice for no fault terminations of tenancy and owner occupancy evictions in just cause jurisdictions. Amendments to the Ellis Act would require that owners hold the property for a minimum of five years before they can evict under Ellis Act. These measures will be heard in policy committees some time in March.

Senator Torlakson will introduce legislation to change the process for tenant notification of the change in ownership and identification of the new owner, and legislation to prevent owners from denying access to properties to tenant organizers. These bills could create significant administrative and legal headaches for the industry.

Update on Rent Control Hot Spots

Richmond – The Richmond Human Relations Commission is exploring the feasibility of adopting rent and eviction controls. The Commission is currently hearing community input. Tenant activists and the East Bay Tenant Bar are attempting to convince the Commission that it should recommend adoption of rent and eviction laws that are similar to laws in San Francisco, Berkeley, and Oakland. I met with local housing groups to provide strategic and tactical support and to help coordinate diverse groups that will take the lead in opposing any measure that may be recommended by the Commission to the Richmond City Council.

Alameda – The City Council has rejected a measure that many owners viewed as the first step toward adoption of rent and eviction controls. The measure would have required relocation expenses to tenants where a building of forty or more units is being renovated and tenancies in four or more units are being terminated. A strong outpouring of owners convinced the Council, for now, that this law is unnecessary and potentially counterproductive.

Pasadena – Tenants attempted to place rent control on the local ballot. Property owners joined together to oppose the effort. We are pleased to report that the rent control proponents failed to return initiative petitions with the required number of signatures to meet the deadline so that the matter could be placed on the ballot. For now, rent control is fairly dead in Pasadena. Nevertheless, we will continue to monitor the situation to see if tenant groups attempt to revive their efforts.

Greg McConnell is a rental housing and legislative consultant. He represents and advises apartment associations, property management companies, and individual owners throughout California. For more information please visit www.themccconnellgroup.com.

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