

THE McCONNELL REPORT

By Greg McConnell

Regulating the Right to Go Out of Business

AB 781 (Leno) regulates the right to go out of business. As introduced, it would require an owner of rental property to remain in business for a period of at least five years before he or she could quit and close down an apartment building. The bill would force an owner to remain in business even if his or her apartment building was unprofitable and the owner could not find anyone to purchase it.

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AB 781 primarily affects owners in rent and eviction control cities who have long-term tenants who pay below market rents. The rent control law prevents rent increases and just cause prevents owners from terminating tenants.

In an attempt to see if I missed anything that would justify regulating the right to go out of business, I interviewed a small property owner to see how she felt about the five-year requirement to stay in business.

I conferred with Jane Doe who owns a four-unit apartment building in Santa Monica. (Of course, that is not her real name. She insisted on anonymity because she fears retaliation from the Santa Monica rent cops.)

Like most people in Santa Monica, Jane Doe is a socially conscious person who supports all of the right causes, except rent control. To my surprise, she was supportive of mandates that she remain in business, if certain conditions were met.

Jane told me that while she would prefer a modest profit on her investment, she was conflicted because she has great empathy for her tenants. She would agree to remain in business and let her tenants pay below market rents because she was concerned that, if they had to increase their rent payments to an amount that would allow her to profitably operate her properties, they may have to discontinue other discretionary spending that they currently enjoy. This, she worried, could cause tenants to become depressed and, if rent increases were widespread, could lead to community mental health problems.

All she wanted was a modest amendment to the bill. She would agree to the five-year waiting period, as long as she did not have to pay her mortgage, taxes, insurance, utilities, and maintenance and management expenses during the time period.

I next spoke with the Vice President of the Santa Monica Landlord Bank. I explained to him that Jane was willing to stay in business as long as she did not have to pay her mortgage. He told me the bank would be happy to accommodate Jane and her tenants and would gladly defer collection of her mortgage payments, as long as the bank was given a tax credit and investors agreed that no profits would be distributed during the time frame. The bank also wanted to be able to charge higher fees and interest rates to other customers.

Landlord Gas and Electric was also sympathetic to the bill and Jane's desire to help her tenants. LGE would agree to forgo monthly utility payments for the five-year period, if the company was granted the right to save money by selectively browning out service to some of its customers.

An insurance company agreed that it would not demand payments during the five-year period if it could deduct equal amounts from claims made by their customers. Management companies also had no problem as long as they did not have to pay their grounds keepers.

And so it went, every business that I spoke with indicated it could live with a law that would prevent an owner with an unprofitable rent control building from going out of business as long as they could pass their losses on to someone else.

Then, I approached government. First, I asked the city of Santa Monica if it would waive collection of business license fees and rent control registration fees. No, it said, that would be a gift of government funds to the owner of the property and in violation of at least 1,000 municipal code sections.

I next spoke with state government officials. They indicated that they were sympathetic to the need to allow tenants to continue renting at below market rates, but they had their own problems. They said the state needed money to continue in business. I told them they didn't need money. All they needed to do was pass a law requiring them to stay in business as long as the owner does, and include in the law a provision that during the mandatory business period, they could waive their duty to pay for police and firefighters and other social services. They did not buy in.

Sadly, I had to go back to Jane with the bad news. I told her that everyone else was OK, but the city and state were adamant that she would have to continue paying taxes.

"But I cannot," she replied. "The rents are too low."

I asked her to remember the depression that tenants may suffer and the community mental health problems that may result. But, now she was not quite so sympathetic. "If they won't waive my taxes, I must have the right to go out of business," she insisted.

As we continued to discuss the issue, Jane became more frustrated, and then anger set in. "I am being discriminated against," she exclaimed. "I have a constitutional right to go out of business."

Regrettably, I had to tell her that our forefathers thought of many things when they drafted the Constitution, but guaranteeing the right to go out of business was not specifically included. Even when they subsequently passed the 13th Amendment abolishing involuntary servitude, they did not specifically include a prohibition against forcing owners to stay in the rental housing business. Frankly, I do not think it ever crossed their minds that anyone would try to force an apartment owner to remain in business.

That is when she said, "then, you must oppose the bill." I agreed and I will.

Note to readers: the Assembly Committee on Housing and Community Development will hear AB 781 on April 27, 2005. If approved by the committee, the full Assembly will then hear it. You can find out about the status of the bill at

<http://www.leginfo.ca.gov/bilinfo.html>. Just enter the bill number and click search.

If you wish to contact your representative so that you can voice your opinion on the bill, you can find contact information at <http://www.assembly.ca.gov/defaulttext.asp>

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