

## **SACRAMENTO REPORT**

**By Greg McConnell**

This month we address two more bills that have been introduced in the Legislature: SB 1834 (Alarcon) which would amend the Ellis Act, and SB 540 (Kehoe) which would prohibit owners from banning campaign flyers in a tenant's apartment.

### **Going Out of Business -SB 1834 (Alarcon)**

The Ellis Act ensures that owners are not forced to remain in business when a rental property is not performing.

Every year, or so it seems, a member of the Legislature wants to revisit the Ellis Act and place restrictions on its use. This year's bill is perhaps the most sweeping attempt in recent memory to make sure owners do not "Ellis" their properties. The Ellis Act ensures that owners are not forced to remain in business when a rental property is not performing. It was created several years ago when an owner, frustrated by the restrictions that rent control and "just cause" laws placed on the operations of his property, decided to send a notice terminating a tenancy because the owner no longer wished to rent the property. After receiving the notice, the tenant refused to leave and the case was set for trial. The court ruled in favor of the tenant, finding that under the local "just cause" law, an owner could only evict for certain enumerated good causes and going out of business was not on the list.

The Legislature came to the rescue, sort of. It created a state law, the Ellis Act, that preempted local "just cause" laws to allow an owner of a rental property to take it off the market. The catch was that if the owner wanted to evict under the Ellis Act, he or she had to permanently go out of business on that property. Every unit in the property had to be permanently removed from the rental market and all of the tenants had to be evicted.

Over the years, the Ellis Act has been amended several times. Those amendments increased the notice period that had to be given to tenants, made special provisions for senior and disabled tenants, and increased fines and penalties on owners who attempted to return properties to the market after a period of time. Last year, a member of the Legislature tried to introduce changes that would have provided that an owner could not go out of business unless he or she had owned the property for at least five years before attempting to go out of business.

Indeed, these amendments and attempted amendments have been designed to make Ellis an unattractive option. However, the frustration of dealing in rent control and "just cause" jurisdictions has served as a strong incentive to keep using the Act to close down rental properties.

Senator Alarcon has come up with a new wrinkle. SB 1834 would redefine the phrase to go out of business as follows: *"To go out of business" means to discontinue in the business or occupation of being a landlord."*

This means that an owner in a rent control or just cause jurisdiction would only be allowed to use the Ellis Act to go out of business if the owner divested himself or herself of all rental property that they own anywhere. In effect, an owner of rental property in Santa Monica or Los Angeles who found that the rents in a building with long term tenants were too low and could not be raised because of rent control, would have to continue suffering losses and continue renting the property unless he or she would be willing to evict every tenant that they had in every property they owned anywhere in the world.

SB 1834 is one the most backward approaches to "protecting tenants" that has ever been attempted. Rather than address the root cause for going out of business – low rents and

underperforming properties because of rent control - it would require owners to evict all of their tenants, even those who pay fair rents in well performing properties.

Owners should not be forced to choose between continuing to rent a building that is bleeding red and evicting all of their tenants. The Legislature of the state California should be looking for incentives to encourage owners to stay in business to provide desperately needed rental housing. It should not be considering laws that would require owners to close down all of their rental units.

The apartment industry has made the defeat of this bill a high priority matter.

### **Very Special Interest Legislation**

Last year we told you about SB 540 (Kehoe). This is the bill that would have overwritten contracts between owners and tenants that ban signs and displays in tenant's windows. Originally, the bill was sponsored by the American Civil Liberties Union and trumpeted as a protection of freedom of speech. Now, the only speech specifically protected in this bill is political speech.

Amendments to the bill do two things: (1) *“prohibit a landlord from prohibiting a tenant from posting or displaying campaign signs relating to an election or legislative vote, including an election for a candidate for public office or to the initiative, referendum, or recall process, except as specified, and (2) permit a landlord to prohibit the posting or display of campaign signs under certain circumstances, including when the posting or display is in excess of a specified period.*

The apartment industry has had misgivings about this bill because it affects how owners can control the appearance of their properties. As a result of negotiations, the author has agreed to limit the bill to political signs and has further agreed to allow owners to limit the *“posting or displaying to a period of time between 90 days prior to the relevant election or vote and 15 days following the election or vote.”*

Given these amendments and the interest the politicians in the legislature have in campaign signs, it will be very difficult to derail this legislation.

By the way, now that the signage is limited to political speech, ACLU is no longer a sponsor of the bill. Apparently, it believes the bill is too narrow in its coverage. This bill is now being promoted by the most special of special interests groups in the state - elected officials. View the entire text of the bills in this report at <http://www.leginfo.ca.gov/bilinfo.html>

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