

FAQs

Condominium Conversion
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Breaking News The San Francisco Board of Supervisors has replaced the old condominium conversion lottery scheme with an entirely new “Expedited Conversion Program” to eliminate the enormous backlog of TIC properties currently waiting for their condo conversions. While advantageous for many existing TIC groups, the new law also seeks to *eliminate future condominium conversions*.

No effect on 2-Unit “Bypass” Conversions. The Expedited Conversion Program is *not* intended to make any changes in current rules which allow *2-unit* properties to convert 12 months after each unit has been occupied by separate individuals who each own at least a 25% interest in the property during the entire occupancy period.

All other Conversions will be charged a New Fee of up to \$20,000 per Unit. This new fee is in addition to the current \$9,688 City conversion processing fee. The \$20K per Unit fee is reduced, based upon the number of their prior lottery losses, and further reduced if the owners are obligated to offer lifetime leases.

Lifetime Leases must be offered to All Tenants. Every tenant in occupancy during a condo conversion must be offered a *lifetime, rent-controlled lease*, for his/her unit; previously, this was required only for elderly or disabled tenants.

New “No-Fault” Eviction Rules. The rules governing how many and what kind of evictions disqualify a property from condo conversion have been tightened.

Certain other TIC Buildings can also convert. Starting in April of 2015, TIC buildings which did not participate in the 2012 or 2013 lotteries but which had a *signed TIC agreement in place as of 5/1/13*, and which meet new six-year owner-occupancy requirements, will, over time, be eligible to convert to condominiums; \$20K per Unit fees will apply. But buildings *without* a signed TIC agreement in place as of 5/1/13 may never qualify for condo conversion.

**What is a
Condominium?**

A condominium consists of an individually owned “Unit”, including the space within the walls, floors and ceilings of a dwelling, plus shared ownership of the remainder of the property, known as “Common Areas”. Owners pay monthly dues to their Homeowners’ Association to cover common repair and insurance expenses, but pay separately their individual mortgages, property taxes and utilities. The relationship between owners is governed by state laws and other rules set forth in a document called the “Covenants, Conditions and Restrictions,” or “CC&Rs”.

CAUTION: the FAQs within are based upon the current lottery rules, not upon the new legislation. Many of these rules will be superseded if the new legislation becomes law.

Why Should I Convert My Property to Condominiums?

Most real estate professionals agree that conversion generally increases a property's value. Conversion allows co-owners of multi-unit buildings to eliminate many of the risks of co-ownership, and facilitates re-sale of individual units. Most condominium units are also exempt from local limits on annual rent increases.

Is My Property Eligible for Conversion?

San Francisco still limits *all* condo conversions to buildings of *no more than 6 residential* units. A mixed-use building may include any number of commercial units, but the number of residential units cannot be greater than 6. A 2-6 unit building will qualify to convert *only* when it (1) meets occupancy requirements; (2) meets 2-unit "Bypass" criteria or 2-6 unit "Expedited Conversion" criteria; and, for "Expedited" conversions only, (3) satisfies Tenant's Rights rules and (4) does not violate new rules governing "no fault" evictions.

Will the new law affect my 2-Unit "Bypass" Conversion?

No. The Expedited Conversion Program is *not* intended to make *any* changes (including the new fees) in the current rules which allow *2-unit* properties to convert if *each unit* has been *separately occupied* for the past 12 months by *separate individuals* who have each owned at least a 25% interest in the property during the entire occupancy period. Owners who evicted a protected tenant *after* May 1, 2005, are subject to the "no fault" eviction rules discussed below.

What happened to the City's annual Condominium Conversion Lottery?

Gone. The City has *suspended* the old annual lottery system awarding condo conversion rights for *at least the next ten years*, and replaced it with the new "Expedited Conversion Program." Should the lottery ever return, owner-occupancy and evictions rules will be tighter, and the maximum allowable number of residential units will be reduced from *six* to *four*.

What new Fees will be charged for my Conversion?

\$20,000 per Unit. The new "Conversion Fee" will be *in addition* to the current fees charged by the City for processing the conversion (\$9,688 as of 7/1/13). The Conversion Fee is *waived* for the buildings that lost for the *eighth time* in the 2013 condo lottery. Conversion Fees collected will be allocated 25% to the Mayor's Office of Housing and 75% to the Citywide Affordable Housing Fund. *These new fees are not charged to "Bypass" conversions of 2-unit, owner-occupied properties.*

Are any Reductions offered for the New Conversion Fees?

Yes. The **\$20,000 per Unit** fee will be reduced based upon the building's number of prior lottery losses - 20% for two prior lottery losses; 40% for three; 60% for four; 80% for five or more prior lottery losses. The new fee is partially refunded to owners who must sign *lifetime leases*. Payment is due immediately following application for conversion, but owner-occupants who meet *low-income* requirements (less than 120% of median income, as determined by the Mayor's Office of Housing) may *defer* payment of the new fee until their application is approved by the City.

How do the City's "No Fault" Eviction Rules Affect Conversions?

The rules governing how many and what kind of evictions *disqualify* a property from condo conversion have been tightened. Added to the existing ban on conversions of buildings with an eviction after May 1, 2005, of *one* "protected" tenant (age 60+ and living in the property for at least 10 years; disabled; or catastrophically ill) tenant, or eviction of any tenants from *two or more* units in the building, a new restriction now disqualifies any building from converting if *any* "no-fault" evictions have taken place *after March 31, 2013*. Evictions based on tenant fault (e.g., non-payment of rent, nuisance) do not disqualify condo conversions. There are a few exceptions to the disqualifying rules which will benefit a handful of buildings.

My TIC Building *has* been in the Lottery – when can I Convert?

TIC buildings which lost the lottery in 2012 or 2013, and satisfied owner-occupancy requirements from *4/5/08 through 5/15/13* have been applying under the new rules since July 29, 2013; their deadline for filing is April 14, 2014. TIC buildings which lost the lottery in 2012 or 2013, and satisfied owner-occupancy requirements from *5/15/11 through 5/15/14* must wait until April 15, 2014, to apply for their conversions; their deadline for filing is January 23, 2015.

My TIC Building has *not* been in the Lottery – can I Convert?

Yes. Starting in April of 2015, TIC properties which did *not* participate in the 2012 or 2013 lotteries but which had a *signed TIC agreement in place as of 4/15/13* (“Additionally Qualified Buildings”), will, over time, become eligible to convert to condominiums; \$20K per Unit fees and new “no fault” eviction rules will apply. The owner-occupancy time periods and starting dates for Additionally Qualified Building conversions are laid out in detail in our companion article, New TIC Condominium Conversion Rules, available online at: <http://tinyurl.com/mr3uxo6>.

What is “Owner-Occupancy”?

“Owner-Occupancy” means an owner *on title* to the property who *continuously* occupies the property as that owner’s *principal residence*. 2-4 unit buildings must have *one* unit owner-occupied for the required time period; 5-6 unit buildings must have *three* units owner-occupied during that time period.

What are the “Tenants Rights” Rules?

Renters occupying a building undergoing condo conversion must be given the right to buy their unit. Owners can set the price, but if the tenant doesn’t buy, the tenant may demand, and the Owners must sign, a *lifetime, rent-controlled lease*. (Previously, lifetime leases were required only for elderly or disabled tenants). Both the *offer* of a lifetime lease, and the *lease* itself, must be *recorded against title* to the property, together with a *separate binding agreement* between the City and the property owners.

Who will qualify for a Lifetime Lease when there are Multiple Tenants, Subtenants or Roommates?

Uncertain; the new law doesn’t discuss this problem. Probably, *all* occupants living in a rental unit on the date the conversion finishes, perhaps excluding occupants who have been tagged as “Unauthorized Subtenants” under §6.14 of the San Francisco Rent Ordinance. Skillful crafting of these leases will be critical, with particular attention given to subleasing restrictions, including provisions terminating the tenancy if the tenant ceases to occupy the unit, or attempts to collect more rent for the unit than he/she is paying the landlord.

What are the “Tenant Intent to Purchase” Requirements?

Applicants (except in 2-unit “Bypass” buildings) must submit “Tenant Intent to Purchase” forms signed by residents of at least *40%* of the units. These forms express an intention to buy the unit as a condominium, but reserving the right to decline to purchase. Because signers may be *either renters or owner-occupants*, only 3-4 unit buildings with a single owner-occupied unit require renter cooperation to satisfy this particular rule.

What Building Code Work will I Need to do to Convert?

Your building need *not* be upgraded to meet current building codes, be seismically retrofitted, or even have parking. However, the City does require a building inspection as part of the conversion process, which involves: (i) an inspection request form and fee, (ii) a site visit by City building, plumbing and electrical inspectors, (iii) issuance of a written inspection report, (iv) permits for corrective work, (v) completion of all required work, (vi) re-inspection; and (vii) issuance of a Certificate of Final Completion and Occupancy. Inspection reports typically cover three types of problems: (i) work done without required permits (including everything

from decks to in-law units), (ii) conditions which present safety hazards (like poor fire egress or dangerous electrical wiring), and (iii) energy and water conservation violations. Once you request a City inspection, you must perform the cited work whether or not you complete the conversion. In some cases, pre-inspection by a *private* consultant familiar with conversion requirements may be beneficial. A consultant can provide advance warning of likely inspection issues, recommend advance steps to minimize remediation requirements, establish the legality of preexisting improvements, and help you obtain building permits. We can provide a list of knowledgeable inspectors to our clients when needed.

How do Qualifying Properties Begin Conversion?

Owners of qualifying 2-unit “Bypass” properties or 2-6 unit “Expedited Conversion” properties, must submit the latest version of the City’s application package. The major components of the City’s package are:

Inspection: Before submitting a conversion application, you must request a City inspection and pay the required fee. The receipt for the inspection fee is part of the conversion application, and while you *need not have had your inspection* in order to submit your conversion application, an *early inspection* (and rapid completion of the work) can substantially *accelerate completion of your conversion*.

Survey: Conversion requires a survey or “map” prepared by a licensed surveyor which establishes the boundaries of the property and the condominium units. Counsel on the choice of a qualified surveyor is essential. We monitor the performance of local surveyors, and can help you select an affordable surveyor who is both knowledgeable of the City’s ever-changing requirements, and easy to work with.

History: Your application must include a detailed five-year occupancy history of each unit in the building to allow the City to monitor compliance with its latest “no fault” eviction rules.

Occupancy: Owners needing to prove occupancy must submit a sworn statement of the dates of their occupancy, along with proof that homeowner’s property tax exemptions have been recorded for *all* owner-occupants.

Photos: The City continues to tighten its requirements for submission of site photos (to help identify sidewalk encroachments requiring a special permit). We can provide you with examples showing exactly where you must stand when you take photos of your property.

The application package also includes many other items which we can help you compile. *An incomplete or improperly organized package will be rejected by the City; a service charge of \$250 is assessed for resubmission.* Because the City gives priority to applicants who follow its complex (and often unpublished) rules, getting it right the first time can avoid unnecessary delays and expense.

Are there any State Requirements for Condo Conversion?

Some 5–6 unit properties are still required to obtain a “Public Report” from the California Bureau of Real Estate (“BRE”) by submitting a *separate application*, with additional fees and expenses. This requirement currently applies *only* to properties where the TIC *seller/developer still owns one or more of the units*.

How Long does the Conversion Process Take? Will the new rules Slow Down or Speed Up Conversions?

During the past three years, the City has successfully reduced the typical conversion time from months or years, to a matter of weeks. However, the new rules have produced a sudden explosion of conversion applications with no funding source to hire additional City staff to process them. Miraculously, all City departments (with one unfortunate exception) are taking the new workload in stride, and we are seeing applicants obtain Tentative Approval in just a few weeks, leaving behind the point at which they might otherwise become stranded, should a suit be filed which triggers a “Poison Pill” (see below).

The fly in the ointment is the City building inspection process, completion of which is required before a conversion can be completed. The calendaring of City building inspections has stretched by many months, and is now the primary determinant of when a conversion will finish. **No buildings** have escaped this bottleneck — not 2-unit, owner-occupied buildings — not even the buildings that lost for the eighth time in the 2013 condo lottery. We continue to hear rumors of planned improvements, but based on current experience, we estimate that processing of 2–4 unit properties will take 8–12 months if the initial application package is correct and complete. Processing of 5–6 unit properties, which require additional City (and sometimes State) approvals, may take 4+ additional months. ***Completion of the building inspection process for 2-unit “Bypass” properties during their 12-month holding period can shorten their conversion time to as little as 2½ months.***

What Other Documentation is Needed?

All condominiums must have Covenants, Conditions & Restrictions (“CC&Rs”) describing the rights and duties of the owners. CC&Rs are prepared by an attorney, and typically include:

- Unit Diagrams prepared by a licensed land surveyor
- Rules for group decision making
- Allocation of financial responsibilities
- Maintenance, repair and alteration rules
- Dues and maintenance reserve requirements
- Usage policies governing noise, pets, parking, etc.
- Requirements for management and record keeping systems

A ***self-prepared*** preliminary Operating Budget & Reserve Study is recommended for smaller properties; we can teach you how to prepare yours.

Does My Lender have to Approve My Conversion?

Following final approval by the City, the survey map is copied onto plastic “mylar” sheets, to be signed by all record owners. If your building has 5–6 units, your current mortgage lender(s) also must sign the mylar map, indicating consent to the conversion. For smaller properties, the City allows recording of the mylar map ***without*** lender signatures. Nevertheless, lenders are entitled by law to be offered a Consent Agreement, which the lender may choose to sign, or not. Some lenders sign willingly, charging a small fee. If a lender refuses to sign, or demands an excessive fee, we can offer effective alternative strategies.

What is the City’s Property Tax Pre-Payment Rule?

The City requires payment of ***all outstanding property taxes*** at the time of completion of a condominium conversion. This includes taxes due for the ***current fiscal year*** (July 1 – June 30) for owners who record their maps between July 1 and January 1, plus, for owners who record their maps between January 1 and July 1, ***an estimated tax bill for the next***

fiscal year. As an alternative to pre-paying the entire next year's property tax bill, the City will accept a bond to guaranty future payment, an unattractive option, as bonding companies typically charge a premium of 2-3% of the bonded amount, and insist upon a rigorous qualification process, requiring verification of income and liquid assets high enough to justify the bonding company's risk of covering future tax payments.

When is Conversion Complete?

After all owners have signed the mylar survey map, it is returned to the City with a certificate of completion of the inspection work, and a Tax Certificate showing property taxes have been paid. The building officially becomes condominiums when the survey map is recorded. Notices to tenants in possession are given at this time, setting forth the tenants' special purchase and lease rights.

Must I Refinance After Conversion?

Final recordation does not alter the ownership or financing of the property. All of the condominiums in the building remain owned by the same individual or group, and all remain subject to the same mortgage. Thus, if three owners each own 1/3 of a 3-unit building before conversion, they will each own 1/3 *of all three condominium units* after conversion. Refinancing is a necessary step to separate ownership of the individual units, so that particular owners can acquire title to particular units, and involves replacing the existing loan(s) on the entire building with separate loans on individual condominium units. This is true even if the existing loans are "fractional" TIC mortgages.

Can I Sell Before Conversion is Complete?

For properties converted through the Expedited Conversion Program, a sale of the property is permissible at any time, although we recommend that the conversion application be filed prior to any title transfers. For 2-unit, owner-occupied "Bypass" properties, the City insists that the original owners continue to own and occupy the property until the conversion has been completed.

Will Conversion Increase My Property Taxes and Insurance Premiums?

Conversion will not increase the assessed value of your property. The current assessed value will be allocated among the condominium units, and each unit will get a separate tax bill based on the allocation. Property taxes may increase, however, if the City levies any "parcel taxes", as each new unit will be considered a separate "parcel." Conversion often increases insurance costs, particularly in 3-6 unit buildings, and you may be obligated to switch insurance companies. Consulting your insurance agent early in the conversion process will help eliminate unpleasant surprises once the conversion is complete.

Will My Unit Remain Subject to Rent Control After Conversion?

The State's Costa-Hawkins law exempts many single-family residences from local restrictions on annual rent increases, such as those found under the San Francisco Residential Rent Stabilization and Arbitration Ordinance. The landlord of a single-family residence which is subject to Costa Hawkins can increase rent annually *without restriction*; however, other eviction limitations continue to apply. Condominiums are considered single-family residences, and Costa-Hawkins privileges will apply to a newly converted unit, but only *after* the unit has been sold to a bona fide purchaser for value, or in the case of a building where all of the converted units but one have been sold, to the remaining unsold unit after the owner has resided there for one year. Note that tenants who moved into their units *before January 1, 1996*, are exempt from the Costa-Hawkins law, and retain all of their Rent Control rights; the same is true for tenants who acquire *lifetime leases*.

What is the “Poison Pill”, and Can it Stop my Conversion? What Happens if the Courts Strike Down Provisions of the New Law?

If anyone files suit against the City disputing the Expedited Conversion Program, **condo conversions may cease** until the suit is resolved. There are numerous exceptions to the “Poison Pill” provision of the new law, which are described in our companion article, *New TIC Condominium Conversion Rules*, available online at: <http://tinyurl.com/mr3uxo6>. If a Court strikes down either the **lottery suspension** or the tenant **lifetime lease** provisions, the Expedited Conversion Program will **terminate**, the lottery will not resume until January 1, 2024, and generally, only those buildings which have already obtained Tentative Approval from the City will be allowed to finish their conversions.

What Will My Conversion Cost?

City Fees: San Francisco charges building inspection fees starting at \$2,346, an application fee of \$9,688, and recording fees of about \$12. The new Expedited Conversion Fees range from \$4,000 to \$20,000 per unit.

State Fees: A State application is required only for **some** 5–6 unit buildings; the fee is about \$1,700. For these buildings, California also requires a formal Budget & Reserve Study which should be prepared by a professional service at a cost of about \$3,500.

Surveyor: Survey maps start at about \$3,500, and increase with building size and complexity.

Attorney: Goldstein, Gellman, Melbostad, Harris & McSparran, LLP (“G3MH”) offers a complete, flat-fee package, including: preparation of the City Application; counsel on building inspection issues; assistance in selection of surveyor and title company; advice on space assignment; status reports, monitoring and troubleshooting; and CC&R preparation. Our fees vary depending on property size, and are competitively priced; please call for details.

Repairs: Building permit fees and repair costs will vary, depending on the results of your building’s physical inspection.

Title: A subdivision specialist at a title company is an essential member of your conversion team. Title companies charge from \$200–\$800 to write a Subdivision Guarantee title policy to the City, which will be required at the end of your conversion.

Lender: Most lenders typically charge from \$200–\$1,200 to approve conversions.

Are any of these Fees Refundable if my Conversion is Suspended?

Partially. Should the Expedited Conversion Program be suspended because of a legal challenge, you may apply for a refund of the \$9,688 you paid. All of the City departments reviewing your conversion (Planning, Rent Board, Human Rights, DPW, etc.) are invited to deduct their “time and material” costs from your refund. If your application is simply **rejected**, or your conversion **disapproved**, the new \$4K–\$20K per-unit Conversion Fee is fully refundable.

Are there any Buildings which can No Longer Convert?

Yes. Single-owner buildings which did **not** participate in either the 2012 or 2013 lottery, and 2–4 unit TIC groups which formed **after** April 15, 2013, are **not** eligible for the Expedited Conversion Program; they must wait and hope the lottery returns more than a decade from now. A 5–6 unit building may be allowed to participate in a future lottery only if **there have been no evictions since 4/15/2013**, and the building has been continuously occupied by at least 3 owners for **10 years**.

I Want to Start my Conversion Right Away – What do I do Next?

- Confirm that your building is in the Expedited Conversion Program’s first tier — you participated in the 2012 or 2013 lottery and satisfy owner-occupancy requirements since April 15, 2008.
- Understand that if you have tenants, you must offer them lifetime leases.
- Accumulate the extra cost of the new Conversion Fees.
- Make an appointment ASAP with attorney Boyd McSparran or David Gellman at G3MH to review your building’s eligibility and get your conversion application started for early submission to the City. You probably can’t “beat the rush”, but you can be closer to the front of the pack, instead of bringing up the rear!

How do I Choose a Lawyer to Assist Me in My Conversion?

A Law Firm Specializing in Condominium Conversions Should Offer You:

- A choice of experienced attorneys knowledgeable in all aspects of the conversion process;
- A long history of successfully completing conversions in San Francisco;
- Ongoing guidance to help prevent you from making 1st timers’ mistakes;
- Concise, customized application materials, tailored to your specific property;
- Counsel in all stages of the conversion process, including building inspection, selection of a competent surveyor, and lender issues;
- Representation before the City Planning Commission when required;
- A single point of contact with City agencies;
- Expertise in landlord/tenant issues;
- Outstanding experience in mortgage lender consent requirements;
- Knowledge of the City’s rules and procedures – those on the books, as well as the unwritten rules learned only through experience.

What Sets Goldstein, Gellman, Melbostad, Harris & McSparran, LLP (“G3MH”) Apart in Condo Conversions?

EXPERIENCE:

G3MH has been a respected member of San Francisco’s real estate community for over thirty years. Our team initiated its first condominium conversion in 1998. Since then, we have successfully completed the majority of all San Francisco conversions, including most prior lottery winners – over 3,000 condominium conversions. Our daily contacts with the City staffers who process conversions keep us current on the “unwritten rules” – the little tweaks essential to submitting a perfect application that the City doesn’t divulge in its published materials. ***G3MH is the only condominium conversion law firm providing dispute resolution services to condominium owners and associations, giving us unique insights into steps that can be taken at the conversion stage to minimize future conflicts.***

SPEED:

The G3MH team’s excellent and long-standing reputation with City officials helps insure that your conversion application receives attention in a timely fashion. The City has come to expect that every G3MH application will be complete and correct the first time it is submitted. ***Whereas it once took several years to complete a condominium conversion, G3MH now completes conversions for most clients within 12 months – in some instances within 2 months.*** Our attorneys will meet with you personally multiple times throughout the conversion process, and we will offer important alerts and reminders, to keep your conversion from falling behind.

ECONOMY:

G3MH provides its condominium conversion services throughout the entire process on a flat-fee basis. We think you will find our fees both affordable and appropriate to the services you will receive. The scope of our work is clearly explained up front, and the costs laid out for you, so that there will be no surprises down the road. Any additional hourly services are incurred only at your specific request.

SERVICE:

At G3MH, you will find *attorneys* (not just paralegals) ready and willing to meet with you face-to-face whenever needed. G3MH is a full-service law firm, which means that we can offer additional guidance in landlord/tenant issues, title transfer and vesting, trust and estate matters, easements, tenancies-in-common, property taxes, and other matters related to the conversion process. We will keep you apprised of changes in law or local procedures affecting your application. No other firm in San Francisco offers the staffing and resources to meet your needs in every aspect of condominium conversion, and beyond.

About the Authors and the G3MH Condo Conversion Team:

David R. Gellman, managing partner of G3MH, has extensive experience in condominium subdivisions, tenancy-in-common (TIC) formation, landlord/tenant (rent control), real estate litigation, commercial leasing, like-kind exchanges, and estate planning. His companion article, “Small Condominium Dispute Resolution” can be found on the firm’s website at www.g3mh.com. Mr. Gellman is an accredited instructor with the California Department of Real Estate, and frequently conducts co-ownership workshops for attorneys, real estate agents, and prospective home buyers. Mr. Gellman can be contacted via email at DGellman@g3mh.com, or by phone at 415/673-5600 ext.229.

R. Boyd McSparran is a partner of G3MH. His practice areas include condominium conversion, tenancies-in-common, commercial and residential real property transactions, and landlord-tenant disputes. He can be contacted via email at BMcSparran@g3mh.com, or by phone at 415/673-5600 ext.257.

Brian and Neal are paralegals at G3MH. Together, they have prepared over a thousand successful conversion application packages. Brian is responsible for maintaining contact with the City departments and staff who process conversion applications, and is an invaluable resource for the latest twists and turns in the City’s application requirements.

This article summarizes the rules understood to be in effect on its publication date. Buyers and Owners should check with the author for recent developments before making commitments based on information in this article. Updated versions of this article may appear on the firm’s website at www.g3mh.com.

Condominium Conversion Process

