



## Rent Stabilization Board

**DATE:** September 26, 2023

**TO:** Honorable Members of the Eviction/Section 8/Foreclosure Committee

**FROM:** Oliver Ehlinger, Staff Attorney

**SUBJECT:** Summary of Ellis Act Evictions (1986 – June 30, 2023)

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### Background

The origins of the Ellis Act (Gov't Code sections 7060 *et seq.*; “the Act.”) are found in *Nash v. City of Santa Monica* (1984) 37 Cal.3d 97. The plaintiff in *Nash* argued that rent control was a form of indentured servitude, and it was unconstitutional to force him to continue as a landlord by not being able to evict his tenants at will. The California Supreme Court disagreed and found that a city’s interest in maintaining adequate rental housing outweighed a landlord’s interest in demolishing his residential rental property provided the landlord was receiving a fair return on his investment. In 1985, in direct response to the *Nash* decision, the Legislature adopted the Ellis Act which provides that: “[n]o public entity . . . shall . . . compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease.” (Gov’t Code §7060(a).) Thus, the Act gives property owners an absolute right to leave the residential landlord-tenant business. Accordingly, a claim that a landlord is going out of the residential rental business is good cause for eviction. The Ellis Act does not expressly create new or additional rights to change the use of the property after the property owner regains possession of the rental units and, in fact, allows cities to maintain control over most land use issues.

In an attempt to ensure that this right to evict sitting tenants is not abused, the Act authorizes a municipality to place the following constraints on a property that has been removed from the residential rental market. The City Council codified Berkeley’s various restrictions in the Ellis Implementation Ordinance (Berkeley Municipal Code Section 13.77):

- For all tenancies commenced within 5 years of the date of filing of the notice of intent to withdraw accommodations from rent or lease or the date the accommodations were withdrawn from the market, whichever is later, the accommodation must be rented at the lawful rent in effect at the time the notice is filed, plus the annual adjustments granted by the Berkeley Rent Board. (B.M.C. 13.77.040A.)

- If the accommodations are rented within 2 years of being withdrawn from the rental housing market, the owner shall be liable to the displaced tenants for actual and punitive damages. (B.M.C. 13.77.040B.)
- If the accommodations are re-rented within 10 years of the date of withdrawal, the accommodation must first be offered to the displaced tenant(s). (B.M.C. 13.77.040C.)
- In addition, the Condominium Conversion Ordinance prohibits owners from applying to convert the building to condominiums for at least 10 years following the filing of an Ellis notice. (B.M.C. 21.28.060C. and 21.28.090B.)

The Ellis Act and Implementation Ordinance authorize accommodations to be withdrawn from the market following at least 120 days' notice to the tenants. (Gov't Code §7060.4(b). and B.M.C. 13.77.050A.1.) The date of withdrawal is extended to one year for tenants who are disabled or 62 years of age or older, have lived in the unit for at least one year and have timely notified the owner of qualification for this extended notice period. (Gov't Code §7060.4(b). and B.M.C. 13.77.050A.8.)

The Ellis Implementation Ordinance has been revised several times throughout the years to account for changes in state law and to adjust relocation benefits. In the ordinance, the Council initially established relocation benefits of \$4,500, an amount that tracked the original relocation benefits given to low-income tenants who are displaced due to owner move-in evictions. In subsequent years, Council has revised the Ellis Implementation Ordinance to remove the requirement that a household be low-income to receive relocation benefits. These were adjusted by Council in December of 2016 increasing the relocation benefits to \$15,000 per household with an additional \$5,000 available to households that qualify as low-income or include disabled or elderly tenants, minor children, or a household with a tenancy that began prior to January 1, 1999. Commencing in 2018, the relocation benefits now increase in an amount based on the Consumer Price Index.

At the request of the Council and as permitted under City of Berkeley Charter Article XVII Section 123(4), the Rent Board monitored compliance with the Ellis Act from 1986-1991. From 1991 through 1999 the City administered the Ellis Act. The Board resumed monitoring compliance in 2000. The Board counsels landlords and tenants regarding the Ellis Act; receives and reviews all Ellis notices; contacts tenants following receipt of notices; holds the relocation funds in escrow and distributes funds at the appropriate time; files the notice of constraints with the County; and continues to monitor rental occupancy of units that were withdrawn from the rental market on a periodic basis.

Ellis Bill filings in the city have remained fairly low the past few years compared to cities such as San Francisco and Los Angeles which have experienced exponentially greater Ellis Act filings. In 2018 there were six filings totaling twenty-six units, for 2019 there was one filing which has since been rescinded, for year 2020 there were two filings, one of which was rescinded. In 2022, there were five filings, representing seven units, one of which was rescinded

and re-served. This is compared to filings in the early 2000's which saw 40 filings representing 113 units over a span from 2001 through 2004.

During most of the COVID-19 pandemic, Ellis Act withdrawals were permitted. On September 29, 2022, Council amended the COVID-19 eviction moratorium to prohibit Ellis Act withdrawals. Presumably as a result, the Board did not receive any Ellis requests after that date.

The following data is taken from the Board's and City's Ellis Act files:

### **Ellis Bill Filings Since July 1986**

Calendar Year	# of Properties Filed	Total Number of Units	Comments
1986	1	6	
1987	3	7	
1988	2	5	
1989	8	19	
1990	14	52	12 unit bldg
1991	8	18	
1992	6	23	
1993	6	26	12 unit bldg
1994	2	2	
1995	2	4	
1996	2	19	12 unit bldg
1997	4	5	
1998	3	4	
1999	4	7	
2000	2	5	
2001	18	51	
2002	9	24	
2003	8	17	
2004	6	21	
2005	2	3	
2006	7	26	
2007	4	8	
2008	6	11	
2009	2	8	
2010	2	11	
2011	0	0	
2012	0	0	
2013	2	7	
2014	3	10	
2015	6	21	
2016	3	11	
2017	4	13	
2018	5	13	
2019	0	0	

2020	2	6	
2021	5	25	
2022	4	7	
2023*	0	0	
<b>Totals</b>	<b>165</b>	<b>495</b>	

\*Totals through June 30, 2023

## Size of the Buildings Taken off the Market

Number of Units in Bldg	Total Ellis Filings	% of Total Filings
1 Unit	50	30%
2 Units	42	25%
3 Units	20	12%
4 Units	22	13%
5 Units	5	3%
6 Units	12	7%
7 Units	4	2%
8 Units	3	2%
9 Units	1	0.6%
10 Units	0	n/a
11-15 Units	3	2%
16 or More Units	1	.6%

## ELLIS RELOCATION BENEFITS

<b>Berkeley</b>	\$18,011 for all households \$6,003 additional for any household with disabled, elderly, low-income, long-term or tenant with minor child
<b>San Francisco</b>	Up to \$10,000 per tenant (\$30,000 max per household) depending on when filed Add up to \$6,700 for each elderly or disabled tenant
<b>Santa Monica</b>	Studio \$18,250 (\$19,050 for disabled, elderly, family with minor) 1 Bedroom \$25,150 (\$26,850 for disabled, elderly, family with minor) 2+ Bedrooms \$34,950 (\$37,250 for disabled, elderly, family with minor)
<b>West Hollywood</b>	Studio \$7,840 1 Bedroom \$11,070 2 Bedroom \$14,911 3+ Bedrooms \$19,679 Disabled/elderly/terminally ill/moderate income or minor child – \$20,753 Low-income \$26,133