

# CONDOMINIUM CONVERSION IN SAN FRANCISCO

## FAQs

(Frequently Asked Questions)

2/1/2005 Edition, by David R. Gellman

[www.g3mh.com](http://www.g3mh.com)

### Breaking News:

On February 1, 2005, Supervisors Michela Alioto-Pier and Bevan Dufty proposed new legislation to allow Tenancy-In-Common ownership groups currently eligible for this year's condominium conversion lottery to sidestep existing restrictions on condominium conversions (including both the lottery and the 200 unit limit), provided that the property is **100% owner-occupied by a Tenancy-In-Common group as of January 20, 2005**.

On November 16, 2004, the San Francisco Board of Supervisors amended the City's Subdivision Code, changing the rules for certain condominium conversions. What initially began as an effort by Supervisor Chris Daly to throw all 2-unit conversions into the tightly limited condominium conversion lottery, and to block conversions in all properties where elderly or disabled tenants had been evicted since 1999, was ultimately passed unanimously by the Supervisors and signed into law by Mayor Newsom in a more benign version, under which only those properties where elderly or disabled tenants are evicted **after November 16, 2004**, face new restrictions on condominium conversion. 2-unit, owner-occupied properties retain the ability to bypass the conversion lottery, at least for now; owners of these properties are encouraged to file conversion applications immediately.

**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 a document called the "Covenants, Conditions and Restrictions", or "CC&Rs".

**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 to facilitate sale of individual units, by replacing shared financing with individual mortgages. Certain condominium units also will be exempt from San Francisco Rent Control limits on annual rent increases.

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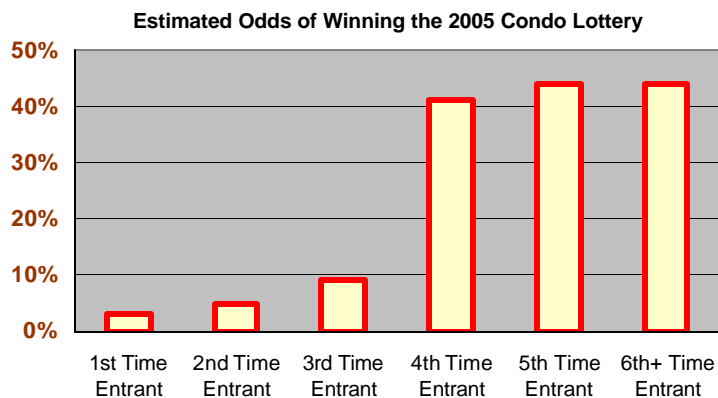
This article summarizes the rules understood to be in effect on its publication date. Buyers and Owners should check with the author for recent developments before making commitments based on information in this article. Updated versions of this article may appear on the firm's website at [www.g3mh.com](http://www.g3mh.com).

**Is My Property Eligible for Conversion?** San Francisco 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) wins or bypasses the annual conversion lottery; and, (3) for lottery conversions only, satisfies Tenant's Rights rules.

**What is the San Francisco Condominium Conversion Lottery?** San Francisco severely restricts residential condominium conversions. All 2-6 unit buildings (other than the owner-occupied 2-unit properties described below) must compete in an annual lottery for the right to convert. A maximum of residential 200 units can win the right to convert each year through the lottery.

**Which Properties Bypass the Conversion Lottery?** *2-unit* properties bypass the conversion lottery only 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. Occupancy must be proven by electric and telephone service. There is no annual limit on the number of owner-occupied 2-unit buildings which can convert via the lottery bypass. However, no other buildings can bypass the conversion lottery. **Under the new Daly legislation, owners who evict elderly or disabled tenants after November 16, 2004, will be denied a lottery bypass, and will be forced to enter a restricted "Protected Eviction", lottery pool** (see below).

**What are the Odds of Winning the Conversion Lottery?** The lottery system is designed to favor buildings that have previously lost. This means the odds of your of winning are very low the first time you enter but increase in successive years:.



Odds for participants in the new "Protected Eviction" lottery pool are *not* factored into this chart, and are estimated to be less than 5% in any entry year.

**How does the Conversion Lottery Work (Pool A & Pool B)?** In addition to eligible owner-occupied 2-unit buildings, San Francisco allows only **200** units to condo convert each year. Buildings are chosen through an annual lottery, which is divided into two drawings. The "Pool A" drawing selects 100 units from buildings which have lost at least three times (two losses must be after 1994). Each building meeting this criteria gets one Pool A ticket. After the first 100 units are awarded in the Pool A drawing, all remaining Pool A buildings are automatically entered in Pool B for the remaining 100 units.

The "Pool B" drawing selects the remaining winners from all applicants, but is also weighted to favor previous losers. First-time entrants receive one Pool B ticket. All others get an extra Pool B ticket for each loss after 1994, plus one for any and all losses in 1990-94, up to a **maximum of five** Pool B tickets.

Winning buildings must submit a conversion application by a July deadline. Losing buildings go on a waiting list and take the place of winners who fail to submit, or submit applications which are rejected.

**How does the New Daly Legislation Affect the Lottery?** The new Daly legislation creates a special category for buildings where “protected” seniors (over 60) or disabled tenants are evicted **after November 16, 2004**. These buildings are *ineligible* for the first 175 units awarded through the lottery, meaning that these buildings will be tagged as “Protected Eviction”, and will, regardless of prior lottery losses, be *barred* from Pool A, and left to compete with all other applicants for **the last 25 units awarded through Pool B**.

**How do I Apply for the Conversion Lottery?** The conversion lottery is held annually in February (in 2005, the lottery date was February 2 and the entry deadline was January 20). The lottery fee is a flat \$150 per building. After having won the lottery, applicants must still satisfy the City’s “Owner-Occupancy” and “Tenant Intent to Purchase” requirements:

**Owner-Occupancy**

For 2-4 unit lottery winners, **one** unit must have been owner-occupied for three years; for 5-6 unit lottery winners, **three** units must each have been owner-occupied for three years. During those three years, the **same** owner-occupant(s) must reside in the property continuously; the identities of the qualifying owner-occupants **cannot change** (although they can move about within the building). Occupancy must be proven by electric and telephone service. The three-year occupancy period is measured backward from the lottery entry deadline (i.e., to qualify in 2006, the required number of owner-occupants must have occupied continuously since January 2003). The term “owner-occupant” is a misnomer, as the City actually allows the occupant to be a **renter** for three years as long as he or she has also become an owner by the time the lottery ticket is purchased.

**Tenant Intent to Purchase**

Lottery winners must submit “Tenant Intent to Purchase” forms signed by residents of at least 40% of the units. These forms state that the signer “intends” to buy his or her unit as a condominium, while reserving the right later to decline to buy. Because signers may be either renters or owner-occupants, only 3-4 unit buildings with a single owner-occupant need 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) submittal of the inspection request form and fee, (ii) a site visit by City building, plumbing and electrical inspectors, (iii) issuance of a written inspection report, (iv) receipt of building permits for corrective work, (v) completion of all required work, (vi) City inspection of the work; and, (vii) issuance of a Certificate of Final Completion and Occupancy.

Inspection reports typically cover three types of problems: (i) work which was 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.

It is neither necessary nor advisable to initiate the City inspection process prior to submitting a conversion application. Applicants must request an inspection and pay the fee before submitting a conversion application, but need not have the actual inspection or complete the corrective work until **after** the application is submitted.

**What are the “Tenants Rights” Rules?** A renter living in a dwelling unit at the time a lottery conversion is completed gets an opportunity to purchase the condominium unit at a price established by the owner. Renters who decline to purchase may request a one-year rent-controlled lease or moving assistance; disabled and senior (over 62) renters are entitled to lifetime rent-controlled leases. These rules apply *only to lottery conversions*, not to lottery bypass conversions. San Francisco Rent Control rules allow for the eviction of a renter at the conclusion of the lease term (for lottery conversions) or upon completion of the conversion (for lottery bypassers) to facilitate the sale of a newly converted unit.

**How do Qualifying Properties Begin Conversion?** Owners of qualifying buildings (either lottery winners or 2-unit lottery bypassers) must submit a multi-part application package to the City. The major components of the package are:

**Inspection:** Before submitting a conversion application, you must request a City inspection by mailing in a form and required fee. The receipt for the inspection fee is part of the conversion application, but you *need not have had your inspection* in order to submit the conversion application.

**Survey:** Conversion requires a survey or "map" prepared by a licensed surveyor which locates 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 a surveyor who is knowledgeable of the City's ever-changing requirements.

**Occupancy:** Owners or renters needing to prove occupancy must submit bills or letters from PG&E and a land-line telephone company confirming service. Owners must also sign a sworn statement and submit evidence of a homeowner's property tax exemption.

The application package must also include a variety of other items which we can help you compile.

**How Long does the Conversion Process Take?** Regrettably, the City is taking longer every year to complete the conversion process. A new state law, AB728, was expected to speed up processing, but has not had any noticeable effect. Based on current staffing levels in the City departments involved and the backlog of existing applications, we estimate that processing of 2-4 unit properties will take 24-36 months. Processing of 5-6 unit properties, which require additional City and State approvals, will take about 4 additional months.

**What Other Documentation is Needed?** All condominiums must have CC&Rs describing the rights and duties of the owners. CC&Rs are prepared by an attorney, and typically include:

- A Condominium Plan
- 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

Properties of 5-6 units must also obtain a "Final Report" from the California Department of Real Estate by submitting a separate application, including a professionally prepared preliminary Operating Budget. A self-prepared preliminary Operating Budget is suggested for smaller properties; we can assist you in preparation.

**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. Your current

mortgage lender(s) also must sign the mylar map, indicating consent to the conversion. This requirement applies even if you intend to refinance the condominiums separately after conversion. Most lenders sign willingly, charging a small fee. However, if your lender is among the small minority who refuse to sign, you will be obliged to replace that lender (refinance) before you can complete the conversion. We maintain an up-to-the-minute database of lenders' conversion policies, backed up by years of experience interpreting and satisfying lender map signing requirements.

**When is Conversion Complete?** After all owners and lenders have signed the mylar survey map, it is returned to the City with an updated title report, 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 and CC&Rs are recorded. For lottery conversions, notices to tenants in possession are given at this time (or for 5-6 unit buildings, when the State's Public Report is issued), setting forth the tenants' special purchase and occupancy 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. Although refinancing is not generally required to complete a condominium conversion, it 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 several smaller loans on individual condominiums. Most owners will refinance: (i) to allow the condominium units to be transferred to individual owners or sold separately; (ii) to eliminate the default risk associated with sharing a loan obligation with other owners; (iii) to eliminate the risk that a future job loss, illness, or credit blemish will make refinancing difficult or impossible; or (iv) to qualify a unit for eventual exemption from San Francisco Rent Control limitations on rent increases.

**Can I Sell Before Conversion is Complete?** For properties converted through the lottery, 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 owner-occupied lottery bypass properties, the City prefers that any sales be deferred until Tentative Approval is granted, currently 12-24 months following the application filing.

**Will Conversion Increase My Property Taxes and Insurance Premiums?** Conversion will not increase the assessed value of your property. The current value will be allocated among the condominium units, and each unit will get a separate tax bill based on the allocation. Conversion often increases insurance costs, particularly in 3-6 unit buildings, and you may be obliged 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 the Costa Hawkins law can increase rent annually without restriction; however, other Rent Control rules 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 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 1 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.

## What Will My Conversion Cost?

- City Fees:** San Francisco charges a building inspection fee ranging from \$511 for two units to \$852 for six units; an application fee of \$4,625 for 2-4 units or \$7,975 for \$5-6 units, and a recording fee of about \$50.
- State Fees:** A State application is required *only* for 5-6 unit buildings; the fee is about \$1,700. For these buildings, California also requires a formal budget which should be prepared by a professional service at a cost of about \$2,500.
- Surveyor:** Survey maps start at about \$5,000, and increase with building size and complexity.
- Attorney:** Goldstein, Gellman, Melbostad, Gibson & Harris, LLP (“G3MH”) offers a complete, flat-fee package, including: preparation of the multi-part City Application; counsel on building inspection issues; assistance in selection of surveyor and title company; advice on space assignment; status reports, monitoring and troubleshooting; CC&R preparation; and assistance in lender signing and recordation. Please call for current pricing.
- Repairs:** Building permit fees and repair costs will vary, depending on the results of your building’s physical inspection.
- Title:** G3MH can obtain required title reports on your behalf free of charge if you agree to use the assisting title company in your post-conversion refinancing or sale.
- Lender:** Most lenders charge from \$200-400 to sign your condominium map.

## 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;
- Ongoing guidance to help prevent you from making 1<sup>st</sup> timers’ mistakes;
- 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.
- 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, Gibson & Harris, LLP (“G3MH”) Apart in Condo Conversions?

### Experience:

G3MH has been a respected member of San Francisco’s real estate community for over twenty years. Our condominium conversion team initiated its first San Francisco condominium conversion in December of 1998. Since then, we have successfully completed over two thousand San Francisco condominium conversions. In 2004, G3MH handled conversion applications for over two-thirds of all of last year’s lottery units, plus an additional 174 duplex units exempt from lottery requirements.

### Expediting:

G3MH is not a conversion “expediter.” No one in San Francisco is, and hiring anyone – including us – with the expectation that your application will receive “special” attention from City officials will

leave you disappointed. However, the G3MH team has years of experience with the subtleties of the various City departments involved in condominium conversion. We work hard to insure that your application is complete and correct the first time it is submitted. We will meet with you personally throughout the conversion process; we are always available to answer your questions by phone and email, and we will keep you apprised of the status of your application, and changes in law or local procedures affecting same. We stay in constant contact with City departments to help anticipate changes in the condominium conversion procedure, and we maintain an excellent and long-standing reputation with City officials to help insure that your conversion application receives the attention of the necessary parties in a timely fashion.

#### **Flat-Fee:**

G3MH provides its condominium conversion services over the entire multi-year process on a flat-fee basis. We think you will find our fees both modest 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 or “extras” down the road. Any additional hourly services are incurred only at your specific request.

#### **Service:**

G3MH is a full-service law firm, which means that our attorneys and paralegals are available to offer additional guidance in landlord/tenant issues, title transfer and vesting, trust and estate matters, easements, tenancies-in-common, property tax issues, and all other matters indirectly related to the conversion process. Although we hope you never need it, should you require representation in trial or arbitration, our team of litigators is at your disposal. 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 Author and the G3MH Condo Conversion Team:**

David R. Gellman, managing partner of G3MH, has extensive experience in tenancy-in-common (TIC) formation, condominium conversion, landlord/tenant (rent control), real estate litigation, commercial leasing, like-kind exchanges, multifamily housing finance, construction, and estate planning. Mr. Gellman is an accredited instructor with the California Department of Real Estate, and frequently conducts co-ownership workshops for attorneys, real estate agents, corporations, and prospective home buyers. He has written a companion article to this one, entitled “Tenancies-In-Common in San Francisco” which can be found on the firm’s website at [www.g3mh.com](http://www.g3mh.com). Mr. Gellman can be contacted via email at [DGellman@g3mh.com](mailto:DGellman@g3mh.com).

Boyd McSparran is an associate of G3MH. His practice areas include condominium conversion, tenancies-in-common, commercial and residential real property transactions, and landlord-tenant disputes. He has written a companion article, entitled “Tenant Evictions in San Francisco” which can be found on the firm’s website at [www.g3mh.com](http://www.g3mh.com). He can be contacted via email at [BMcSparran@g3mh.com](mailto:BMcSparran@g3mh.com).

Pamela Wiget is a paralegal at G3MH. She is responsible for maintaining contact with the City departments and staff who process conversion applications. Pamela has special expertise in lender approvals of condominium conversions, and often consults with commercial lenders to help them administer their conversion approval policies.

This article is for informational purposes only, and should not be relied on as legal advice about specific situations. Readers should consult an attorney if they need help with legal matters. We invite readers seeking legal assistance to contact one of our attorneys to discuss their needs.