

ORDINANCE NO. 34-09 N.S.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
AMENDING CHAPTER 7.105 OF THE RICHMOND MUNICIPAL CODE
RELATING TO EVICTION CONTROL ON RESIDENTIAL PROPERTY IN
FORECLOSURE

SECTION 1. Following a duly noticed public hearing, the City Council of the City of Richmond hereby finds and determines:

- A. On June 16, 2009, the City Council of the City of Richmond enacted Ordinance No. 16-09 N.S., which added Chapter 7.105 to the Richmond Municipal Code, entitled Eviction Control on Residential Property in Foreclosure.
- B. Minor amendments are now necessary to ensure that Chapter 7.105 is consistent with State eviction laws.

SECTION 2. The City Council of the City of Richmond hereby ordains that Richmond Municipal Code Chapter 7.105 is repealed and replaced with Chapter 7.105 (Eviction Control on Residential Property in Foreclosure) to read as follows:

Chapter 7.105

EVICTION CONTROL ON RESIDENTIAL PROPERTY IN FORECLOSURE

- 7.105.010 Definitions.
- 7.105.020 Evictions.
- 7.1 05.030 Required payment of relocation fee.
- 7.105.040 Required information on notice to quit or other written notice of termination.
- 7.105.050 Retaliation prohibited.
- 7.105.060 Affirmative defense.
- 7.105.070 Constructive eviction.
- 7 . 1 05.080 Notice of default.
- 7.105.0980 Applicability.
- 7.105.090 Severability.
- 7.105.010 Definitions.

(a) "Landlord" means an owner, lessor, or sublessor who obtains title to a rental unit through a sale under the power of sale of a deed of trust or foreclosure and who receives or is entitled to receive rent for the use and occupancy of any residential rental unit or portion thereof in the City of Richmond, and the agent, representative or successor of any of the foregoing. An owner shall own at least 25% of the residential unit. "Landlord" shall not include a person who obtains title to a single family residence owned and occupied by a family member of that person unless there is an existing written lease between the family member and a tenant. As used in this subsection, "family member" shall include the spouse, domestic partner, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, children, or parents.

(b) "Purchaser for value" means a person who is not employed by, affiliated with, or acting on behalf of an entity that acquires title to a rental unit following sale of the rental unit under the power of sale in a deed of trust or foreclosure, and who is not purchasing the property for the purpose of evading the protections of this ordinance.

(c) "Tenant" means a person entitled by written agreement, or oral agreement the existence of which is established by written evidence, subtenancy approved by the landlord, or by sufferance, to occupy a residential dwelling unit to the exclusion of others, or who was entitled to occupy the unit as of the date of transfer of title to the unit due to a sale under the power of sale of a deed of trust or foreclosure.

(d) "Rental unit" means a dwelling unit occupied for rent in the City of Richmond together with the land and appurtenant buildings thereto and all housing services, privileges and facilities provided in connection with the use or occupancy thereof. The term "rental unit" shall not include rental units owned or operated by any government agency or whose rent is subsidized by any government agency, including but not limited to Section 8 housing subsidies.

7.105.020 Evictions.

During the period that a rental unit is owned after transfer of title to the unit due to a sale under the power of sale of a deed of trust or foreclosure, and until such time as the rental unit is sold to a purchaser for value, a landlord may bring an action to recover possession of the rental unit only upon one of the following grounds:

(1) The tenant, after being provided with the written notice required by sections 1161 and 1162 of the Code of Civil Procedure of the identity and mailing address of the person to whom rent is due, and the amount of rent due, has failed to pay the rent to which the landlord is entitled within three calendar days of after receiving such notice. Notice shall be given to the tenant in the manner prescribed by California Code of Civil Procedure Section 1162.

(2) The tenant has violated a lawful obligation or covenant of the tenancy and has failed to cure such violation after notice, as provided for in sections 1161 and 1162 of the Code of Civil Procedure within seven calendar days after having received written notice thereof from the landlord, other than a violation based on:

(A) The obligation to surrender possession upon proper notice; or

(B) The obligation to limit occupancy when the additional tenant who joins the occupants is a dependent child who joins the existing tenancy of a tenant of record or the sole adult tenant. The landlord has the right to approve or disapprove a prospective additional tenant who is not a minor dependent child, provided that the approval is not unreasonably withheld. Notice shall be given to the tenant in the manner prescribed by California Code of Civil Procedure Section 1162.

(3) The tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the rental unit, or the appurtenances thereof, or to the common areas of the rental complex, or is creating a substantial interference with the comfort, safety or enjoyment of the landlord or tenants in the building.

(4) The tenant is using, or permitting a rental unit, the common areas of the rental unit or rental complex containing the rental unit, to be used for any illegal purpose.

(5) The tenant, who had a written agreement, or an oral agreement the existence of which is established by written evidence, with the landlord which has terminated, has refused after written request or demand by the landlord to execute, within seven calendar days after that request, a written extension or renewal thereof for a further term and under such terms which are materially the same as in the previous agreement, provided that any such agreement that is executed by the tenant shall terminate 30 days after the date the rental unit is transferred to a purchaser for value. The written request or demand by the landlord shall be given to the tenant in the manner prescribed by California Code of Civil Procedure Section 1162.

(6) The tenant has, after written notice to cease, refused the landlord access to the rental unit as required by state or local law.

(7) A person in possession of the rental unit at the end of a lease term, or upon the sale under the power of sale contained in a deed of trust, or foreclosure of a rental unit or the building in which the rental unit is located, is a subtenant not approved by the landlord.

(8) The landlord seeks in good faith to recover possession of the rental unit for use and occupancy by:

(A) A resident manager, provided that no alternative, comparable vacant unit is available for occupancy by a resident manager; except that where a building has an existing resident manager, the owner may only evict the existing resident manager in order to replace him or her with a new manager.

(B) The landlord or the landlord's spouse, domestic partner, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, children, or parents provided the landlord is a natural person. However, a landlord may use this ground to recover possession for use and occupancy by the landlord, landlord's spouse, domestic partner, child, parent, in laws or grandparents only once for that person in each rental complex of the landlord.

(9) The landlord seeks in good faith to recover possession to remove the rental unit permanently from rental housing use pursuant to state law.

(10) The landlord seeks in good faith to recover possession so as to:

(A) Demolish the rental unit; or

(B) Perform work on the building or buildings housing the rental unit or units; and:

(i) Such work costs not less than the product of eight (8) times the amount of the monthly rent times the number of rental units upon which such work is performed. For purposes of this section, the monthly rent shall be the average of the preceding twelve-month period; and

(ii) The work necessitates the eviction of the tenant because such work will render the rentable unit uninhabitable for a period of not less than thirty (30) calendar days.

(11) The landlord seeks in good faith to recover possession of the rental unit to comply with a government agency's order to vacate, or any other order that necessitates the vacating of the building, housing or rental unit as a result of a violation of the City of Richmond's Municipal Code or any other provision of law.

(12) The landlord seeks in good faith to recover possession of the rental unit to comply with a contractual agreement or government regulation relating to the qualifications of tenancy with a governmental entity, where the tenant is no longer qualified.

7.1 05.030 Required payment of relocation fee.

(a) If the termination of tenancy is based on the grounds set forth in subsections (8), (9), (10) or (11) of Section 7.105.020, then the landlord shall pay a relocation fee in the amount of the product of two (2) times the amount of the contract monthly rent at the time title to the unit transferred to Landlord, plus one thousand dollars (\$1,000).

(b) The fee shall be paid as follows:

(1) The entire fee shall be paid to a tenant who is the only tenant in a rental unit, but only if the tenant is named in a written lease; or

(2) If a rental unit is occupied by two (2) or more tenants, then each tenant of the unit shall be paid a pro-rata share of the relocation fee, but only if the tenant is named in a written lease.

(c) This section shall not apply in any of the following circumstances:

(1) The landlord seeks in good faith to recover possession of the rental unit for use and occupancy by a resident manager, provided that the resident manager is replacing the existing resident manager in the same unit. For the purposes of this exception, a resident manager shall not include the landlord, or the landlord's spouse, domestic partner, children or parents.

(2) The landlord seeks in good faith to recover possession of the rental unit in order to comply with a governmental agency's order to vacate the building housing the rental unit due to hazardous conditions caused by a natural disaster or act of God.

(3) The landlord seeks in good faith to recover possession of the rental unit in order to comply with a governmental agency's order to vacate the building housing the rental unit due to a violation of the City of Richmond's Municipal Code or any other provision of law where the violation resulted from the tenant's conduct and through no fault of the landlord.

(4) To the extent that the tenant receives, as part of the eviction, relocation assistance from another government agency.

(5) A written lease, other than a month-to-month lease, with an established termination date, has terminated because the term of the lease has expired.

(d) The landlord shall perform the acts described in this subsection within fifteen (15) days after service of a written notice of termination; provided, however, the landlord may in its sole discretion, elect to pay the monetary relocation benefits to be paid to a tenant pursuant to this subsection to the landlord's attorney or to an escrow account to be disbursed to the tenant upon certification of vacation of the rental unit. The escrow account shall provide for the payment prior to vacation of all or a portion of the monetary relocation benefits for actual relocation expenses incurred or to be incurred by the tenant prior to vacation, including but not limited to security deposits, moving expense deposits and utility connection charges.

(e) The requirement to pay relocation assistance is applicable to all rental units, regardless of whether the rental unit was created or established in violation of any provision of law.

(f) Nothing in this subsection relieves the landlord from the obligation to provide relocation assistance pursuant to any other provision of local, state or federal law. If a tenant is entitled to monetary relocation benefits pursuant to any other provision, of local, state or federal law, then such monetary benefits shall operate as a credit against monetary benefits required to be paid to the tenant under this subsection.

7.105.040 Required information on notice to quit or other written notice of termination.

Prior to or at the same time a written notice of termination set forth in Civil Code Section 1946, or a notice described in Code of Civil Procedure Sections 1161 and 1161(a) 1161 a, is served on the tenant of the rental unit:

(1) The landlord shall serve on the tenant a written notice setting forth the reasons for the termination with specific facts to permit a determination of the date, place and circumstances concerning the reason. This notice shall be given in the manner prescribed by California Code of Civil Procedure Section 1162 and may be combined with a written notice of termination of tenancy or as a separate written notice.

(2) The landlord shall serve on the tenant a written notice setting forth the tenant's right to relocation assistance as described in Section 7.105.030, where the termination of tenancy is based on the grounds set forth in subsections (8), (9), (10) or (11) of Section 7.104.020.

7.105.050 Retaliation prohibited.

(a) No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit a rental unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services or increase the rent where the landlord's intent is to retaliate against the tenant for the tenant's assertion or exercise of rights under this chapter or under state or federal law. Such retaliation shall be a defense to an action to recover possession of the rental unit.

(b) In an action against the tenant, evidence of the assertion or exercise by the tenant of rights under this chapter or under state or federal law within one hundred eighty (180) days prior to the alleged act of retaliation shall create a rebuttable presumption that the landlord's act was retaliatory. "Presumption" means that the court must find the existence of the facts presumed unless and until its nonexistence is proven by a preponderance of the evidence. A tenant may assert retaliation as a defense to the landlord's action without the presumption regardless of the period of time which has elapsed between the tenant's assertion or exercise of rights under this chapter and the alleged act of retaliation.

7.105.060 Affirmative defense.

In any action by a landlord to recover possession of a rental unit, the tenant may raise as an affirmative defense any violation or noncompliance with the provisions of this chapter.

7.105.070 Constructive eviction.

A landlord may not engage in any activity that is intended to constructively evict a tenant not otherwise subject to eviction under Section 7.105.020. For purposes of this chapter, "constructive eviction" means causing a tenant to vacate the property through acts taken by the landlord--or the landlord's failure to act--that would compel a reasonable tenant to vacate the property.

7.105.080 Notice of default.

At the same time a mortgagor or trustee serves a notice of default under the mortgage or deed of trust on the owner of record of a rental unit occupied by a tenant or tenants, the mortgagor or trustee shall serve copies of that notice on all tenants occupying the rental unit.

7.105.0980 Applicability.

The requirements of this chapter and the availability of the remedies hereunder shall be applicable to notices to quit or terminate tenancy, which notice(s) were served on or after July 1, 2009.

7.105.090 Severability.

If any provision of this chapter is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this chapter which can be given effect without the invalid provisions and therefore the provisions of this chapter are severable. The council declares that it would have enacted each section, paragraph and sentence notwithstanding the invalidity of any other section, paragraph or sentence.

SECTION 3. This Ordinance becomes effective 30 days after its final passage and adoption.

First reading at a regular meeting of the Council of the City of Richmond held October 6, 2009, and finally passed and adopted at a regular meeting thereof held October 20, 2009, by the following vote:

AYE: Councilmembers Bates, Butt, Ritterman, Rogers, Viramontes, Vice Mayor Lopez, and and Mayor McLaughlin

NOES: None

ABSTENTIONS: None

ABSENT: None

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

I certify that the foregoing is a true copy of Ordinance No. 34-09, finally passed and adopted by the Council of the City of Richmond at a meeting held on October 20, 2009.