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A High Tax to Inhibit Quick Sales of Small Rental Properties

Proposal for New Transfer Tax of up to 24% On Sales of Multi-Unit Residential Buildings Not Held for More Than Five Years

by M. Brett Gladstone

Supervisor Eric Mar introduced a ballot measure this month for the November election that would impose an additional transfer tax on the sale of existing residential properties of 2 units to 30 units, within 5 years of purchase. In the case of a property held for less than a year, the additional transfer surcharge could be as high as 24% of the value of the property. In the case of a property held longer, the additional transfer surcharge will be a lower percent. Supervisor Mar's proposal is designed to punish the kind of investors that he and tenant activists believe are driving the increased number of evictions in San Francisco by flipping rental properties or by turning them into condominiums or tenancies in common.

Property owners and businesses who fear that their workers cannot find enough housing are particularly concerned about the proposal as they expect it to limit the number of properties on the market at any one time and thus make the supply continue to be outpaced by the demand, leading to even higher prices. Moreover, many question why properties of over 30 units are exempted. Small property owners are concerned that it does not include an exemption for sales to family members, and that it also punishes those forced to move or sell the small building they own and live in (with perhaps one tenant unit) because of a job change or a sudden change in family circumstances.

Exemptions from the proposed ordinance would include: (1) newly built housing, (2) single family homes with no accessory dwelling or in-law units, (3) sales within 1 year of the death of an owner when that person had an ownership interest of 20% or more of the property, (4) owner-occupied properties wherein at least one owner of a 10% or more interest has resided for a year in the unit, prior to the conveyance, as his or her proven principal place of residence, (5) properties with affordability based restrictions, and (6) sales of properties which do not generate a profit. The restrictions based on affordability, for purpose of this law, include those units for which occupancy is limited to households with incomes not exceeding 120 percentage median income or households where the average income of all households occupying the unit does not exceed 80 percent of the area median income; (7) buildings of more than 30 separate residential units; and (8) buildings of no more than two dwelling units where all of the following are true: (a) the owner who is selling has applied for a first building permit approval from the Building Department or the Planning Department by July 1, 2014; and (b) the total construction cost of the first building permit and any subsequent permits for the same property is $500,000 or more and (c) the last permit issued by the Building Department was issued within one year preceding the date that the property is sold.

Tenancy in common ownership is not exempted, but condominium ownership is exempted. The money raised by the tax is to be directed to the general fund, although Supervisor Mar said that he would push for the money to be used for more affordable housing.

San Francisco's elected representative to the California State Senate, Mark Leno, has introduced a bill (SB 1439) which would allow San Francisco to require that landlords hold a rental property for five years before taking it off the rental market. This would require an amendment to the State's Ellis Act, which provides that no local government can require a rental property owner to continue to offer his or her housing for rent.

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