

# CalRHA Special Legislative Updates



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**Date:** 1/12/2022  
**Subject:** AB 854 (Lee) Withdrawal of Accommodations  
- Assembly Housing Hearing Outcome

AB 854 just passed the Assembly Housing and Community Development - after much testimony on both sides - on a 6-2 party line vote. Carillo and Kalra added on as a co-authors. It will now head to the Appropriations Committee.

The analysis of the bill can be found below. The author accepted the committee recommended amendments to limit the bill to rent controlled districts.



CA Assemblyperson  
Buffy Wicks



CA Assemblyperson  
Alex Lee

Date of Hearing: January 12, 2022

## ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Buffy Wicks, Chair

AB 854 (Lee) – As Amended March 18, 2021

SUBJECT: Residential Real Property: Withdrawal of Accommodations

SUMMARY: Prohibits property owners who have owned rental accommodations for less than five years from using or threatening to use the Ellis Act to withdraw rental accommodations and places other limits on the use of the Ellis Act. Specifically, this bill:

- 1) Prohibits an owner of a rental property from using the Ellis Act ("the Act") to file a notice to withdraw accommodations, prosecute an action to recover possession of accommodations, or threaten to do either, unless the owner has owned the property for at least five years.
- 2) Requires that, if the owner is not an individual person, all persons or entities with an ownership interest in the property must have held the property for at least five continuous years.
- 3) Prohibits an owner who files intent to withdraw a property with the public entity under the Act from subsequently withdrawing another property, prosecuting an action to recover possession, or threatening to do either of these things, if the other property is purchased within ten years of the prior filing.
- 4) Prohibits any person or entity with an ownership interest in a property from acting in concert with a co-owner, successor owner, prospective owner, agent employee, or assignee to circumvent the above prohibitions.
- 5) Requires an owner notifying a public entity about an intention to withdraw a property under the Act to include in the notice, the identity of each person, entity, and members of an entity, with an ownership interest in the property. Further specifies that this information shall not be confidential and shall be available for public inspection.
- 6) Provides that a violator of any of these provisions is liable to the tenant for actual damages, special damages of at least \$2,000 for each violation, and reasonable attorney fees and court costs as determined by the court.

7) Specifies that the remedy provided by the bill is not exclusive and shall not preclude either the tenant or lessee from pursuing any other remedy provided by law.

**EXISTING LAW:**

1) Prohibits, under the Ellis Act ("the Act"), a public entity, by statute, ordinance, regulation, or administrative action from compelling an owner of any residential real property to offer, or continue to offer, accommodations in the property for rent or lease. (Government Code Section 7060)

2) Defines, for the purposes of the Act, "accommodations" to mean either:

a) The residential rental units in a detached physical structure with four or more units; or

b) Units in a detached physical structure containing three or fewer residential rental units and in any other structure located on the same parcel of land, including any detached physical structure specified in a). (Government Code Section 7060(b))

3) Authorizes a public entity that has in effect any control or system of control on the price at which accommodations may be offered for rent or lease (rent control) to adopt through ordinance, statute, or regulation the following requirements for the withdraw of accommodations under the Ellis Act:

a) If the unit is rented within five years following the filing of the notice of intent to withdraw, regardless of whether notice of intent is rescinded or the withdrawal of accommodations is completed, or within five years after their withdrawal, the unit must be offered at the lawful rent in effect at the time any notice of intent to withdraw the accommodations was filed with the public entity, plus annual adjustments available under the system of rent control. (Government Code Section 7060.2(a))

b) If a unit is offered for residential rental purposes within two years from the date the accommodations were withdrawn from the rental market, then:

i. The property owner is liable to any displaced tenant for actual and exemplary damages, but the suit must be brought within three years of when the accommodations were withdrawn from rent or lease;

ii. A public entity is authorized to, within three years of the withdrawal of the accommodations, bring a civil proceeding against any owner who has again offered accommodations for rent or lease subject to this subdivision, for exemplary damages for displacement of tenants or lessees; and

iii. The property owner must offer former tenants the right of first refusal to reoccupy the property pursuant to a reinstated rental agreement where the tenant has advised the owner of this entitlement within 30 days of the tenant's eviction from the premises when the property was first withdrawn. (Government Code Section 7060.2(b))

c) That an owner who offers accommodations again for rent or lease less than 10 years from the date of withdrawal must first offer the unit to the displaced tenant or lessee, if that tenant or lessee requests the offer in writing within 30 days after the owner has notified the public entity of an intention to offer the accommodations again for rent or lease pursuant to a requirement adopted by the public entity. The owner of the accommodations shall be liable to any displaced tenant or lessee for punitive damages in an amount which does not exceed the contract rent for six months, and the payment of which shall not be construed to extinguish the owner's obligation to comply with this subdivision. (Government Code Section 7060.2(c))

d) If the accommodations are demolished, and new accommodations are constructed on the same property, and offered for rent or lease within five years of the date the accommodations were withdrawn, the newly constructed accommodations shall be subject to any system of controls on the price at which they would be offered on the basis of a fair and reasonable return on the newly constructed accommodations, notwithstanding any exemption from the system of controls for newly constructed accommodations. (Government Code Section 7060.2(d)).

4) Specifies that a public entity which maintains control or a system of control on the price at which accommodations are offered for rent may require that the owner notify the entity of an intention to withdraw those accommodations from rent or lease and may require that the notice contain statements, under penalty of perjury, providing information on: the number of accommodations, the address or location of those accommodations, the name or names of the tenants or lessees of the accommodations, and the rent applicable to each residential rental unit. (Government Code Section 7060.4(a))

5) Provides that a public entity which maintains control or a system of control on the price at which accommodations are offered for rent may enact an ordinance which requires owners to give notice prior to withdrawing accommodations from the rental market. In jurisdictions with such an ordinance, owners must provide 120 days' notice before terminating the tenancy or one year's notice, in the case of tenants who are disabled or at least 62 years old, provided they have lived in the accommodations for at least one year prior to the date of delivery to the public entity of the notice of intent to withdraw. (Government Code Section 7060.4(b))

6) Provides that it is the intent of the Legislature in enacting the Ellis Act to supersede any holding or portion of any holding in *Nash v. City of Santa Monica* (1984) 37 Cal. 3d 97 which conflicts with the Act, so as to permit landlords to leave the rental housing business. Further specifies that the Act is not otherwise intended to, among other things, permit an owner to withdraw from rent or lease less than all of the accommodations, as defined. (Government Code Section 7060.7)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

**Author's statement:** According to the author, "AB 854 aims to reduce tenant displacement and the loss of affordable rental housing, two vital goals for California. The bill reinstates the original intent of the Ellis Act by limiting its use to landlords who have owned their properties for at least five years to prevent speculators from buying apartments and 'going out of the rental housing business' soon after. Targeted tenants of Ellis evictions tend to be long-term, elderly, and disabled individuals — many that are at risk of becoming homeless following eviction from their longtime homes.

It costs California \$0 to preserve an unsubsidized affordable housing unit. It costs as much as \$700,000 to replace one taken off the market by speculators misusing the Ellis Act. AB 854 addresses the unintended consequences of the Ellis Act while preserving the ability for landlords with a genuine desire to exit the rental business to do so."

The Ellis Act: Several jurisdictions in California have adopted rent control policies and just cause eviction protections. Just cause eviction protections limit the circumstances in which landlords may evict their tenants and are crucial for ensuring that property owners cannot circumvent rent control laws by evicting tenants with below market rents. In *Nash v. City of Santa Monica* (1984) 37 Cal.3d 97, the California Supreme Court upheld the power of a city to require a residential property owner to obtain a removal permit, under specified criteria, before the owner could demolish their rental property and cause its removal from the marketplace. The Ellis Act ("the Act"), SB 505 (Ellis), Chapter 1509, Statutes of 1985, was established to provide landlords with the option to remove tenants in order to withdraw the property from the rental market. Under the Act, landlords can evict tenants without cause and remove properties from the rental market if they follow certain procedures.

The Act only applies when an owner seeks to remove all the units within a building or all units on a parcel with a building containing three or fewer units, from the market. The Act authorizes local governments to place restrictions on how property owners can "Ellis" a property and exit the rental property market. Specifically, an owner can be required to give tenants 120 days' notice that the property is being withdrawn from the rental market. One year's notice is required if a tenant is age 62 and older or if the tenant has a disability. If a property withdrawn under the Act is offered for rent again within five years from the date of withdraw, then it must be offered to the last tenant at the same rent the tenant was charged at the time the unit was withdrawn plus any allowable increase that would have been permitted.

These restrictions act as safeguards intended to ensure that rental property owners only use the Act if they genuinely intend to withdraw their property from the rental market. Without such protections, property owners in rent control jurisdictions could use the Act in bad faith to remove long-standing tenants in rent controlled units in order to obtain new tenants to whom they can charge higher, market rate rents. Tenant organizations report that landlords regularly use the Act to evict tenants and then temporarily remove the property from the rental market before seeking new tenants at market rate rent.

Data from the City of Los Angeles' Department of Housing and Community Development indicate that, between 2001 and March of 2021, property owners used the Act to file notice of intent to withdraw 27,217 rent controlled units from the market. An analysis conducted by the Coalition for Economic Survival found that the loss of these 27,217 units removed 3 percent of the City's rent controlled housing units. (Coalition for Economic Survival website. Accessed April 12, 2021. URL: <http://cesinaction.org/dnnmax.com/MapofEllisActEvictions.aspx>). Moreover, the Costa-Hawkins Rental Housing Act currently prohibits local governments from any meaningful expansion of the number of rental housing units that are subject to rent control.

Proposed Limits of Ellis Act: This bill seeks to place further limits on the use of the Act. Specifically, it would prohibit the use or threatened use of the Act unless all owners of the rental property have owned the property for five continuous years before seeking to withdraw it from the rental market. According to the author, this is intended to prevent speculators from buying up rent controlled properties and then using the Act to remove tenants. Additionally, if a property owner has already filed an intent to withdraw a property from the rental market, this bill would bar the owner from subsequently withdrawing another property, prosecuting an action to recover possession, or threatening to do either of these things, if the other property is purchased within ten years of the prior filing. It is unknown how many statewide properties would be subject to this bill given that information on length of ownership for rental properties subject to the Ellis Act is not readily available.

Arguments in Support: According to the Eviction Defense Collaborative, "The Ellis Act has resulted in the loss of tens of thousands of affordable rent control units and the displacement of tenants throughout California. Targeted tenants of Ellis evictions tend to be long-term, elderly, and disabled individuals — some of the most vulnerable tenants in California. The Ellis Act has become a major loophole for speculator developers to destroy California's rent-controlled housing for a profit." Western Center on Law and Poverty writes in support of the bill, "Studies show that many Ellis Act evictions are done by developers who have owned the property less than a year; indicating that these developers had no intent of being in the rental business in the first place."

Arguments in Opposition: Writing in opposition to the bill, the California Apartment Association (CAA) notes, "Owners who now need to exit the rental housing business and take possession of the property — to move in or sell to a family that wishes to move in — would be thwarted by AB 854 if they owned the property for less than 5 years." Additionally, CAA argues that the use of the Ellis Act is fairly uncommon, arguing "Ellis Act conversions account for an extremely small percentage of actions." Similarly, the California Rental Housing Association argues against the bill, stating, "will make it much more difficult for housing providers to exercise their right to go out of business regardless if they are losing money, facing bankruptcy, are attempting to plan their estates or have recently obtained title to the rental property through the passing of a relative."

Committee Amendments: At the request of the author, the committee may wish to consider the following amendments to the bill which state that its provisions only apply to jurisdictions with rent control in place. Section 1 of the bill's proposed Government Code Section 7060.8 is amended as follows to add the following text to subdivision (a):

*(a) When a public entity which, by a valid exercise of its police power, has in effect any control or system of control on the price at which accommodations are offered for rent or lease, all of the following shall apply:*

*~~(a)~~ (1) An owner of accommodations shall not file a notice with a public entity to withdraw accommodations pursuant to this chapter, prosecute an action to recover possession of accommodations*

*pursuant to this chapter, or threaten to do either of these things, unless all the owners of the accommodations have been owners of record for at least five continuous years. If an owner of record is not a natural person, then all persons or entities with an ownership interest in that entity shall have held that interest for at least five continuous years.*

Prior Legislation:

**AB 1795 (Kamlager, 2019):** This bill would have sealed court records in unlawful detainer (eviction) proceedings brought against tenants whose accommodations are being removed from the rental market under the Ellis Act. ***The bill died in the Senate Judiciary Committee.***

**AB 1399 (Bloom, Chapter 596, Statutes of 2019):** Amended the Ellis Act, clarifying that owners may not pay prior tenants liquidated damages in lieu of offering them the opportunity to re-rent their former unit. Additionally, the bill provided that the date by which the accommodations are deemed to have been withdrawn from the rental market is the date on which the final tenancy among all tenants is terminated.

**AB 2364 (Bloom, 2018):** This bill would have made changes to the Ellis Act including the time period in which a landlord would have to offer a unit that is returned to the rental market after it is withdrawn under the Ellis Act. The bill died on the Assembly Floor.

**AB 423 (Bonta, 2017):** This bill would have exempted residential hotels in the City of Oakland from the Ellis Act beginning January 1, 2018. ***The bill died on the Assembly Floor.***

**SB 1267 (Allen, 2016):** This bill would have required a local government by ordinance, when the jurisdiction requires notice of intent to withdraw accommodations under the Ellis Act, to give one year's notice to a tenant with a custodial or family relationship with a pupil enrolled in a primary or secondary school. ***The bill died in the Senate Transportation and Housing Committee.***

**SB 364 (Leno, 2015):** This bill would have allowed the city and county of San Francisco to prohibit, by ordinance or ballot measure, a rental housing owner from removing a building from the market with the Ellis Act unless all owners have held their ownership interest for at least five years. ***The bill died in the Senate Transportation and Housing Committee.***

**SB 1439 (Leno, 2014):** This bill would have allowed the city and county of San Francisco to prohibit, by ordinance or ballot measure, a rental housing owner from removing a property from the market pursuant to the Act unless all owners in the property have held their ownership interest for at least five years. ***This bill died in this committee.***

**SB 464 (Kuehl, 2007):** This bill would have limited the ability of a rental property owner to exercise its Ellis Act rights to cases where the owner has owned the property for at least three years. ***The bill died on the Senate inactive file.***

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