

Item G-1:

Proposed Owner Move-In Eviction Regulations

September 16, 2020 | Regular Meeting of the Richmond Rent Board

Statement of the Issue and Background

- At their meeting on May 15, 2019, members of the Rent Board received a presentation concerning possible Owner Move-In (“OMI”) eviction regulations to help clarify the intent of the Rent Ordinance.
- Between November 2019 and February 2020, the Board considered case study research, community engagement feedback, and an analysis of OMI notices filed with the Rent Program and provided direction to staff on nine specific policy questions.
- With this policy direction, staff members have prepared proposed regulations for the Board’s consideration and potential adoption.

Rent Board Policy Direction: Question #1

Policy Question #1	Board Policy Direction
<p>Should a policy exist that allows two individuals who share ownership of a property (each individual has a 50% recorded interest) <u>each</u> be able to conduct an Owner Move-In eviction on a unit on a property? (So, for example, if two individuals own a duplex together, should each individual be able to conduct an Owner Move-In on a unit on the property?)</p>	<p>Yes, each individual owner who holds 50% interest in the property should be able to conduct an Owner Move-In eviction on the property.</p> <p>In this regulation, since a Landlord is defined as a 50% owner, if a property is jointly owned, each 50% owner may perform an OMI eviction for either themselves or a qualifying relative of a 50% owner.</p>

Addressing Policy Question #1: Regulation 1009 (C)

Anyone who is a **50% owner** can perform an Owner Move-In for themselves or a qualifying relative.

In other words, a 50% owner could perform an OMI on one unit and another 50% owner can do an OMI on another unit for themselves or their qualifying relative.

A "Landlord" as defined in Richmond Municipal Code Section 11.100.050(a)(6), may, in good faith, evict a Tenant from a Rental Unit for the use and occupancy as a Primary Residence for themselves or for their spouse, children, parents, or grandparents.

Rent Board Policy Direction: Question #2

Policy Question #2	Board Policy Direction
<p>Should an individual with at least 50% recorded interest in a trust that owns the property be able to conduct an Owner Move-In eviction?</p>	<p>Yes, with modification: If an owner of a revocable Trust is both the Trustor and the Trustee, with 50% ownership interest in the property, they should be considered a Natural Person for purposes of Owner Move-In eviction. Additionally, a Natural Person cannot be a corporation, partnership, limited partnership or trust company, as defined in California Financial Code, Section 107, real estate investment trust, as defined in Section 856 of the Internal Revenue Code, or association.</p> <p><i>Note: In all cases, the owner must hold at least 50% interest in the property in accordance with section 11.100.050(a)(6)(A) of the Rent Ordinance</i></p>

Addressing Policy Question #2: Regulation 1009 (B) 1 and 1009 (B) 2

By limiting **what cannot be considered a Natural Person**, this regulation clarifies that a court may consider a revocable Trust, where the Trustor and the Trustee are the same person holding at least 50% ownership interest, a Natural Person.

1009 (B) Definition of Natural Person for Purposes of this Regulation

1. Only a Natural Person who has at least a 50 percent ownership interest in a Property shall be considered a Landlord.
2. No corporation, partnership, limited partnership, trust company, as defined in California Financial Code, Section 107, real estate investment trust, as defined in Section 856 of the Internal Revenue Code, or association shall be considered a Natural Person.

Rent Board Policy Direction: Question #3

Policy Question #3:	Board Policy Direction
<p>Should a policy be adopted to limit the number of Owner Move-In evictions that may be conducted by an owner or enumerated relative on a single property? In other words, should the Rent Board prohibit owners from conducting an Owner Move-In eviction for themselves in Unit A, for their parent in Unit B, and for a child in Unit C?</p>	<p>Yes, with an exception: No more than one owner or qualified family member with 50% ownership perform an Owner Move-In on the property even if the other family member lives on the property. This must be the owner or qualified family members' primary residence. Landlords may perform additional OMI's , even if they already occupy one of the units or if there is a vacancy, if there is a demonstrated need for a Reasonable Accommodation.</p>

Addressing Policy Question #3: Regulations

1009 (C) 1 1009 (C) 2, 1009 (C) 3

While Regulation 1009 (C) allows each 50% owner to perform an Owner Move-In for either themselves or a qualifying relative. **Landlords would be prohibited from performing additional OMI evictions on the property beyond their initial OMI eviction(s) unless they can demonstrate the need to do so based on a reasonable accommodation.**

1009 (C) 1: A Landlord that meets the definition espoused in Richmond Municipal Code Section 11.100.050(a)(6) shall only be permitted to perform one Owner Move-In eviction on the Property for either themselves, their spouse, children, parents, or grandparents.

1009 (C) 2: Notwithstanding Regulation 1009(C)(1), a Landlord who has already performed an Owner Move-In for either themselves, their spouse, children, parents, or grandparents, may perform an additional Owner Move-In on the same Property if there is a demonstrated need for a Reasonable Accommodation based on a qualifying Disability as defined by Government Code Section 12955.3. The Landlord or enumerated relative must intend to occupy the Rental Unit as their Primary Residence as defined in Richmond Municipal Code Section 11.100.030(h).

1009 (C) 3: A Landlord shall only have one Primary Residence.

This regulation clarifies that a **Landlord who performs an OMI eviction is only allowed have one Primary Residence.** It also clarifies that **no OMI may occur if there is a vacancy on the property or if the enumerated relative already occupies a unit, unless there is a demonstrated need for a Reasonable Accommodation.**

1009 (C) 4: If any Landlord as defined by Richmond Municipal Code Section 11.100.050(a)(6) or enumerated relative already occupies one unit on a property, no eviction pursuant to Richmond Municipal Code Section 11.100.050(a)(6), may take place unless there is a demonstrated need for a Reasonable Accommodation based on a qualifying Disability as defined by Government Code Section 12955.3.

1009 (C) 5: No eviction pursuant to Richmond Municipal Code Section 11.100.050(a)(6) is permitted if a vacancy exists on the Property, unless there is a demonstrated need for a Reasonable Accommodation based on a qualifying Disability as defined by Government Code Section 12955.3

Rent Board Policy Direction: Question #4

Policy Question #4	Board Policy Direction
<p>When an owner performs an Owner Move-In eviction on a unit that is part of a larger multi-unit building, should a policy exist that would require any future Owner Move-In evictions on the property to occur in that same unit?</p>	<p>Yes, (with the exception that) when an owner lives in the building as a primary resident, the owner may move to another unit because of a reasonable accommodation.</p>

Rent Board Policy Direction: Question #5

Policy Question #5	Board Policy Direction
<p>When a Landlord notifies a former Tenant displaced due to Owner Move-In that the Rental Unit has been placed back on the rental market, how much time do you think the Tenant should have to respond that they would like to exercise their first right of refusal to return to the Rental Unit?</p>	<p>Yes, the Tenant should have up to one month (30 days) to respond.</p>

Addressing Policy Question #5: Regulation 1010 (C) 6

This regulation clarifies that a Tenant has 30 days to assert their first right to re-rent once the rental unit once it becomes available following an Owner-Move-In eviction. The Landlord must notify the Tenant in writing offering the unit back to them for rent. The Tenant must respond in writing and file a copy of their response with the Rent Program within the 30 day period or lose their Right of First Refusal.

Regulation 1010 (C) 6: Failure to Respond to Landlord's Offering to Re-Rent the Rental Unit. **The Tenant shall have thirty-days (30), plus any applicable time provided under California Code of Civil Procedure 1013(a), as amended, to respond in writing to the Landlord's written offer for re-renting the Rental Unit.** Upon responding in writing to the Landlord's offer, the Tenant shall file a copy of their written response with the Rent Program. A Tenant's failure to timely respond to a Landlord's offer to re-rent the Rental Unit that fully adheres to the provisions of Regulation 1010, shall extinguish the Right of First Refusal.

Rent Board Policy Direction: Question #6

Policy Question #6	Board Policy Direction
<p>If the formerly displaced Tenant moves back into the Rental Unit after several years, should a policy exist that allows the Landlord to include the Annual General Adjustment rent increases in the amount of the rent charged?</p>	<p>Yes, but only after a properly-noticed rent increase. The initial rent when the Tenant moves back into the unit should be the amount of Rent that the Tenant was paying when they moved out; however, the Landlord may increase the rent (with proper notice) up to the Maximum Allowable Rent (calculated by adding each year's AGA to the Tenant's Base Rent, as if their tenancy had never been terminated) subject to the Board's adopted banking limitations (Regulation 602).</p>

Addressing Policy Question #6: Regulation 1010 (C) 1 and C (5)

Regulation 1010 (C) 5 and 1010 (C) 1 clarifies that when a Landlord offers first right of refusal to the Tenant in writing and the Tenant asserts their interest in re-renting the unit where the OMI eviction occurred (again in writing), they do so understanding that the Rent would be the same amount it was when the OMI eviction took place, plus all applicable Annual General Adjustments (AGAs), subject to Regulation 602 (limit of 5% of deferred AGAs plus current AGA).

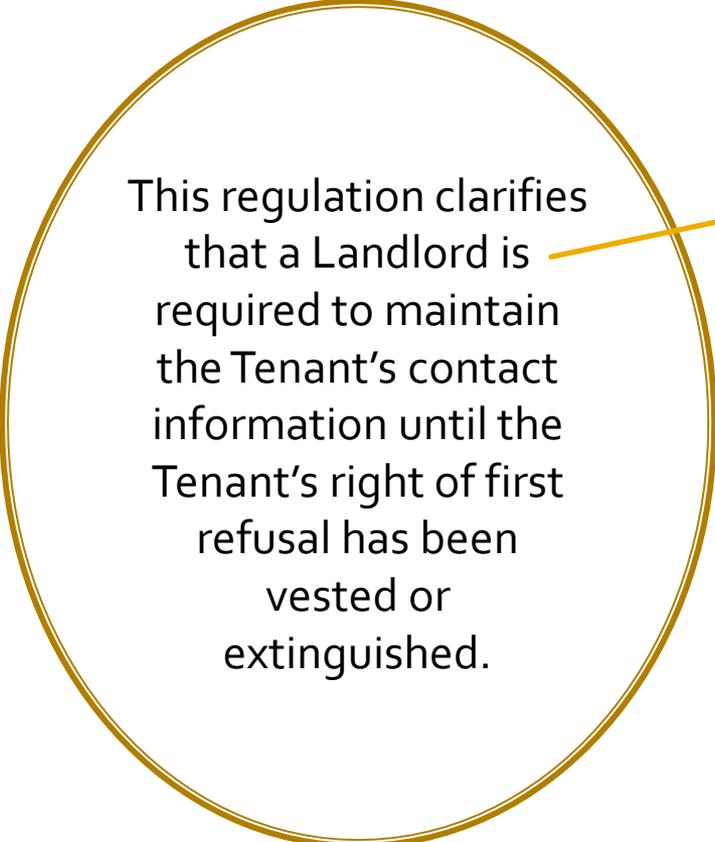
1010 (C) 5: Reoffering the Rental Unit for Rent. It shall be the sole responsibility of the Landlord to reoffer the Rental Unit for Rent if it is ever returned to the rental market. In the event that the Landlord offers the Rental Unit for Rent, the **Landlord shall inform the Rent Program of their intent to offer the Rental Unit for Rent and send the displaced Tenant a written offer to re-rent the Rental Unit at no more than the same Rent the Tenant was paying at the time of service of the notice of termination plus any applicable Annual General Adjustments subject to the provisions of Richmond Regulation 602.** The Landlord shall provide a copy of the written offer letter to the Rent Program within five (5) days from the date the Landlord sent the offer to the Tenant. If the Landlord does not have the displaced Tenant's contact information, the Landlord shall request the Rent Program provide the Landlord with the Tenant's contact information. In such an event, the Rent Program shall seek the written permission of the displaced Tenant to release their contact information to the Landlord. If the displaced Tenant elects not to provide the sought after permission, the Rent Program shall serve as the intermediary, and assist the Landlord in providing the displaced Tenant with the Landlord's written offer for re-renting the Rental Unit to the displaced Tenant.

1010 (C) 1: Right of First Refusal. Upon service of a notice of termination of tenancy pursuant to Richmond Municipal Code Section 11.100.050(a)(6), or other communications stating or otherwise implying that the Landlord seeks recovery of possession of the Rental Unit for purposes of moving into the Rental Unit, the Landlord shall provide the Tenant a Rent Program form, or its equivalent, describing the Tenant's right to return to the Rental Unit if the Rental Unit is ever re-rented. **Additionally, the Rent Program form, or its equivalent, shall instruct the Tenant to indicate whether they would be interested in re-renting the Rental Unit at the same Rent plus all applicable Annual General Adjustments, subject to Regulation 602, if the Rental Unit is offered for Rent.** The Tenant shall provide the Landlord, in writing, their interest to return to the Rental Unit if it is ever offered for Rent and shall provide the Rent Program with a copy of the said written notice.

Rent Board Policy Direction: Question #7

Policy Question #7	Board Policy Direction
<p>How long do you think the Landlord and/or Rent Program should be required to maintain contact information for a formerly displaced Tenant due to an Owner Move-In, in the event that the Rental Unit is placed back on the rental market?</p>	<p>Yes, Tenant's contact information should be maintained for as long as the obligation exists.</p>

Addressing Policy Question #7: Regulation 1010 (C) 4



This regulation clarifies that a Landlord is required to maintain the Tenant's contact information until the Tenant's right of first refusal has been vested or extinguished.

Regulation 1010 (C) 4: Maintenance of Tenant Address or other Contact Information. **The Landlord shall, and the Rent Program may, maintain the Tenant's contact information until a time of which the Tenant's right of first refusal has either vested or been extinguished.** Although the Rent Program may choose to maintain the contact information of the Tenant, it in no way assumes liability for a Landlord's failure to reoffer the Rental Unit to the displaced Tenant, as the Landlord shall have the sole responsibility of meeting their obligation to reoffer a Rental Unit for Rent pursuant to Richmond Municipal Code Section 11.100.050(c), and these Regulations.

Rent Board Policy Direction: Question #8

Policy Question #8	Board Policy Direction
<p>Who should hold the burden of maintaining contact information for the formerly displaced Tenant, in the event the Rental Unit is placed back on the rental market?</p>	<p>Both - the Landlord and the Rent Program should be required to maintain records of the Tenant's contact information. <i>The Board also directed staff to include in the proposed regulation that it shall be the sole responsibility of the Landlord to notify the Rent Program if the Rental Unit is placed back on the market.</i></p>

Addressing Policy Question #8: Regulation 1010 (C) 4

While the Rent Program, may as part of its post-Owner Move-In enforcement, maintain the Tenant's contact information, the Landlord shall have the sole responsibility to meet their obligation to reoffer a Rental Unit, which includes maintaining the Tenant's contact information.

1010 (C) 4: Maintenance of Tenant Address or other Contact Information. The Landlord shall, and the Rent Program may, maintain the Tenant's contact information until a time of which the Tenant's right of first refusal has either vested or been extinguished. Although the Rent Program may choose to maintain the contact information of the Tenant, it in no way assumes liability for a Landlord's failure to reoffer the Rental Unit to the displaced Tenant, as the **Landlord shall have the sole responsibility of meeting their obligation to reoffer a Rental Unit for Rent pursuant to Richmond Municipal Code Section 11.100.050(c), and these Regulations.**

Rent Board Policy Direction: Question #9 and Associated Proposed Regulations

Policy Question #9	Board Policy Direction
<p>What types of additional forms or documentation should be required for compliance, if any? Should a policy exist that the Rent Program is responsible for monitoring compliance with the Owner Move-In requirements of the Rent Ordinance?</p>	<p>Yes, the Landlord would be required to submit the following forms:</p> <p>Initial Certification Form: Per Regulation 1010 (B) 1, this form must be submitted by a Landlord to the Rent Program within 30 days of having issued a notice of termination of tenancy on a Tenant. The form will include the amount of the Tenant's rent on the date the Tenant vacated. Note: The Initial Certification Form must be submitted by the Landlord even if the notice were withdrawn or if the Tenant were informed via other communications from the Landlord is seeking to recover possession for the purposes of Owner Move-In.</p> <p>Statement of Occupancy Form: Per Regulation 1010 (B) 2, a Landlord must submit this form to the Rent Program to attest their own or their relative's documented occupancy, within 30 days from when the Landlord or the Landlord's qualifying relative moved in.</p> <p>Continued Occupancy Certification: Per Regulation 1010 (C), after a Landlord or their relative who performed an OMI eviction has moved in, the Landlord or the Landlords qualifying relative must submit this form along with proof of residence in the Rental Unit. This certification must be provided to the Rent Program every twelve months from the initial move-in date for a total of 36 months following that move-in date. The Rent Program would be required to inform the Tenant if the Landlord fails to provide the Continued Occupancy certification/statement.</p>

Rent Board Policy Direction: Question #9 and Associated Proposed Regulations

Policy Question #9	Board Policy Direction
<p>What types of additional forms or documentation should be required for compliance, if any? Should a policy exist that the Rent Program is responsible for monitoring compliance with the Owner Move-In requirements of the Rent Ordinance?</p>	<p>Yes, for the purpose of monitoring compliance with the Owner Move-In requirements of the Rent Ordinance, Landlords would be required to do the following:</p> <p>Right of First Refusal Form: Per Regulation 1010 (C) 1, a Landlord shall provide the Tenant a Rent Program form, or its equivalent, describing the Tenant’s right to return to the Rental Unit if the Rental Unit is ever re-rented. Additionally, the Rent Program form, or its equivalent, shall instruct the Tenant to indicate whether they would be interested in re-renting the Rental Unit at the same Rent plus all applicable Annual General Adjustments, subject to Regulation 602, if the Rental Unit is offered for Rent. The Tenant shall provide the Landlord, in writing, their interest to return to the Rental Unit if it is ever offered for Rent and shall provide the Rent Program with a copy of the said written notice.</p> <p>Contact Form and Change of Address Form: Per Regulation 1010 (C) 3, the Rent Program shall make available for access a blank change of address/contact information form that the displaced Tenant can use to keep the Rent Program and the Landlord apprised of any future changes of address or contact information. Change of address/contact information form shall contain a statement informing the Tenant that failure to update the Landlord and/or the Rent Program with the most up to date contact information may result in a forfeiture of their right of first refusal.</p>

Good Faith Requirements

- The Richmond Rent Ordinance requires Landlords to act in “good faith” when performing no-fault evictions, such as Owner Move-In evictions, and states that the “Board may adopt regulations governing the determination of good faith.”
- Providing clarity on what good faith means is key to enforcement of no-fault evictions.

Good Faith Requirements (continued)

- If the Landlord or enumerated relative for whom a Tenant has been evicted does not intend to move into the unit within 90 days of the date that the tenant vacates the unit and/or does not intend to thereafter occupy the Rental Unit for at least Thirty-Six (36) consecutive months as their Primary Residence.
- Where proof is presented that an ownership interest was granted for the primary purpose of qualifying a person as a Landlord for purposes of eviction under Richmond Municipal Code Section 11.100.050(a)(6), the Landlord is not proceeding in good faith.
- Where the same Landlord attempts to concurrently perform two evictions pursuant to Richmond Municipal Code Section 11.100.050(a)(6), that Landlord is not proceeding in good faith.
- If the Landlord has other vacant Rental Units on the property where the Tenant currently resides, from the date of the notice to quit until the date of judgment of an Unlawful Detainer, unless there exists a demonstrated Reasonable Accommodation. A vacant unit shall include any Rental Unit for which the Landlord has received notice that a Tenant intends to vacate, a Rental Unit where the Landlord has obtained a Writ of Possession-Real Property, and any Rental unit which is otherwise vacant and not currently rented.

Good Faith Requirements (continued)

5. Whether the Tenant has recently reported violations of Richmond Municipal Code Chapter 11.100, Richmond Rent Board Regulations, and/or Richmond Rent Board Orders to the Rent Program/Rent Board;
6. Whether the Landlord has vacant Rental Units in other residential rental properties in the City of Richmond; whether the Landlord has previously attempted to evict these or other Tenants pursuant to Richmond Municipal Code Section 11.100.050(a)(6);
7. Whether the Tenant being evicted is paying a low Rent in relation to other units on the property; whether the eviction is an attempt to move the tenant into a higher priced Rental Unit; and any additional relevant information.
8. In making a determination as to whether a wrongful eviction has occurred, the Superior Court should consider a Landlord's failure to comply with any of the provisions set forth in Regulation 1010, as evidence that the contested Owner Move-In was not performed in Good Faith.

Recommended Action

- RECEIVE and CONSIDER ADOPTION of proposed Owner Move-In Eviction Regulations 1009 and 1010.