

Kavita Sharma Esq.



Sharma Law Group
100 Pine Street, Suite 1250
San Francisco, CA 94111
(415) 678-1980
kavita@sharmalawgroup.net

Kavita is the principal attorney at Sharma Law Group and has been practicing for 12 years focusing on litigation of property disputes including landlord/tenant, partition actions, fair housing/discrimination, easement, non-disclosure and HOA litigation.

Kavita has spoken on numerous MCLE programs including most recently “Insurance Coverage Issue in Real Property Cases” at the 2016 Annual Meeting of the State Bar and earlier this year at the “2017 Annual Landlord/Tenant Update” for the Bar Association of San Francisco. She has also given landlord/tenant seminars to brokers, property managers and owners. From 2013-2015, Kavita served as an update author for the CEB California Landlord-Tenant Practice Guide.

Kavita is currently a member of the Executive Committee of the Real Property Section of the San Francisco Bar Association. From 2013-2016 she served as an Executive Committee member for the Real Property Law Section of the California State Bar. From 2006- 2011, Kavita volunteered in representing low income, elderly and disabled tenants facing eviction through the Volunteer Legal Services Program of the Bar Association of San Francisco (currently the Justice & Diversity Center).

Steven L. Hammond

Member

Steven Hammond concentrates his practice on real estate law, including transactional and litigation matters. He offers transactional expertise in the areas of lease negotiation and drafting, real property acquisitions and sales, land use, and easements. Steven's litigation experience includes land use and zoning disputes, easement disputes, breach of contract, business fraud, partition actions, real property ownership disputes, landlord-tenant, condominium, and tenancy-in-common matters.

Prior to joining Morris Polich & Purdy, Steven owned his own practice, Hammond Law Group, PC. Before opening his own practice Steven was an attorney with Sideman & Bancroft LLP in San Francisco.

Publications/Presentations

- Author, "Wrongful eviction insurance: more important than ever," *Small Property Owners of San Francisco Institute News*, Volume 18/Issue 6, June 2016

Practices, Industries & Services

Real Estate

Areas of Emphasis

Acquisitions & Dispositions
Business Litigation
Commercial Litigation
Commercial & Residential Development
Foreclosures, Loan Modifications and Lender's Remedies
Land Use & Zoning
Leasing

Memberships

- Member, California Bar Association
- Member, Bar Association of San Francisco
- Member, Lawyers' Club of San Francisco Inn of Court

Honors

- Board Member, Sunset Youth Services



Office

San Francisco
One Embarcadero Center
Suite 400
San Francisco, CA 94111

415.984.8554 (phone)
shammond@clarkhill.com

Education

J.D., cum laude, Lewis & Clark Law School, Portland, Oregon, 2001

B.A., Kalamazoo College,
Kalamazoo, Michigan, 1992,
Economics

State Bar Licenses

California



ANDREW WESTLEY • ATTORNEY AT LAW

ADMITTED TO PRACTICE LAW IN CALIFORNIA & NEW YORK

CURRICULUM VITAE

PRACTICE SUMMARY – TENANT RIGHTS

The Westley Law Office represents Bay Area tenants in every type of legal situation including:

- Wrongful eviction and retaliation lawsuits
- Habitability disputes, including mold
- Lease disputes and terminations
- Illegal unit issues
- Tenancy buy-out negotiations (individual and group)
- Eviction defense

PHILOSOPHY

In tenant-landlord disputes, knowledge is power. Too often, tenants make critical decisions based upon misinformation or incomplete information. Retaining experienced counsel can be the pivotal key to success when a person's home is placed in jeopardy. The Westley Law Office is committed to protecting tenants' rights and preserving safe and affordable housing.

PROFESSIONAL

California Bar (1994); New York Bar (1986)

J.D. 1985, Fordham Law School, NYC

B.A. 1982, New York University, NYC

SEMINARS/PANELS

Panelist, Recent Developments & Hot Topics in S.F. Landlord-Tenant Practice (BASF)

Panelist, Annual Tenant Lawyer Panel (S.F. Apt. Assoc.)

Panelist, Representing Residential Landlords and Tenants in Unlawful Detainer Actions (CEB)

Panelist, Landlord and Tenant Law in California (Lorman Education Services)

PUBLICATIONS/SEMINARS/AWARDS

Consulting Author, *Practice Guide: California Landlord-Tenant Litigation* (LexisNexis)

Contributing Author, *Federal Litigation Guide* (LexisNexis)

Contributing Author, *Federal Litigation Guide: New York & Connecticut* (LexisNexis)

Author, *The Risks of Nonconforming Apartment Units* (S.F. Apartment Magazine, 11/05)

AWARDS

Attorney of the Year, AIDS Legal Referral Panel

Times Mirror Innovation Prize

MICHAEL J. MCLAUGHLIN

Michael J. McLaughlin is a founding partner of McLaughlin Sanchez LLP, and concentrates his practice on representing landlords in handling tenant disputes. McLaughlin Sanchez is a San Francisco-based real estate litigation firm that Mr. McLaughlin founded with his law partner, seasoned landlord litigator Andres Sanchez.

Mr. McLaughlin represents homeowners, property investors, and landlords in complex litigations. Mr. McLaughlin has successfully tried HOA disputes and complex unlawful detainer actions before Bay Area juries and regularly appears before the San Francisco and Oakland Rent Boards. He regularly speaks on the San Francisco Rent Ordinance and related landlord-tenant topics before real estate professionals.

Mr. McLaughlin has practiced law for over 18 years and prides himself on developing individually tailored strategies reflecting each client's unique needs, which allows him to obtain the most efficient and cost-effective results. He graduated *summa cum laude*, fifth in his class, from Seattle University School of Law, and is a member of the California, New York, Maryland, and District of Columbia bars.

Outline

What Every San Francisco Practitioner Needs to Know about Unpermitted Units

A. Definitions

1. Unauthorized Units v. Dwelling Units v. Residential Units
 - a. The current Certificate of Final Completion (Cal. Code Regs., tit. 24, pt. 2, § 111.1) establishes the whether a unit is considered “Authorized.” See also, 3R Reports.
 - b. A Dwelling Unit is a living space within a structure, which contains cooking facilities and within which a person or persons resided for 32 days or more at a time. A dwelling unit can be authorized or unauthorized.
 - c. A Residential Unit is a legal conforming or non-conforming dwelling unit. (S.F. Planning Code § 102.7.)
2. Removal of Unauthorized / Unpermitted Unit. Traditionally, an unauthorized Dwelling Unit could be removed by obtaining an over-the-counter permit as a Revert To Original Use Permit.
3. Controls on the Removal of Dwelling Units. SF Planning Code § 317 requires a public hearing before the Planning Commission to review any application that would remove a dwelling unit whether by merger demolition or conversion.
 - a. Administrative Exceptions.
4. DBI v. Planning Department. The Department of Building Inspection is not aggressively enforcing Notice of Violations for unauthorized units because of the reluctance of the Planning Department and Planning Commission to issue a permit for the removal of a Dwelling Unit.

B. Unpermitted Units Subject to SFRO

1. Rules and Regulation §1.17: “ ‘Rental Unit’ ” means a residential dwelling unit, regardless of zoning or legal status, in the City and County of San Francisco...”
2. SFRO §37.2(r)(5): “Rental units located in a structure for which a certificate of occupancy was first issued after the effective date of this ordinance” are exempt from the Rent Ordinance. *Cf* Rules and Regulation §1.17(e): “newly constructed rental units for which a certificate of occupancy was first issued after June 13, 1979” are exempt from the Rent Ordinance.

3. Rent Board has ruled that unpermitted units **regardless** of the year they were built are subject to the Rent Ordinance because no certificate of occupancy was ever issued for that unit. T151370/AL150146; CPF 16-515040.

C. Problems Faced by Tenants Renting Unpermitted Units

1. Habitability concerns – unpermitted/unauthorized units are not code compliant; they generally are constructed without proper permits and do not comply with Housing Code requirements.
 - a. Civil Code §1941.1
“A dwelling shall be deemed untenable for purposes of [Civil Code] Section 1941 if it ... is a residential unit described in Section 17920.3 ... of the Health and Safety Code[.]”
 - b. Health & Safety Code § 17920.3, subsections (d), (e), (n)
 - c. S.F. Housing Code § 1001 (mirrors Health & Safety Code § 17920.3)
2. Health concerns, including mold
 - a. S.F. Housing Code § 401 (nuisance), § 1002 (additional substandard conditions), § 1306 (sanitation)
 - b. Health & Safety Code § 17920.3(a)(13)
 - c. Insurance coverage issues
3. Everything may seem fine, until it’s not.
 - a. DBI does not proactively inspect. Inspections are triggered by complaints or permit applications. DBI will issue a Notice of Violation requiring the owner to legalize the unit unless it can be shown it is “infeasible” to do so under the Building Code, or a serious and imminent hazard exists on the property due to the illegal unit.
 - b. Permanent withdrawal by owner: SFRO § 37.9(a) – “just-cause” required for termination.
 - i. Subsection (10): Demolition/Permanent Removal
 - ii. Statutory relocation

- iii. The process: effective 4/2016, conditional use approval by the Planning Commission is required.
- c. Ellis Act (SFRO § 37.9(a)(13))
- d. Owner occupancy (or occupancy by a qualified relative)
Query: Is OMI/RMI permissible if residential use of the unit is not legal in the first instance?
- e. Condo conversion issues
 - i. Part 1: When is conversion allowed?
 - ii. Part 2: Certain no-fault evictions or tenant buyouts may impact condo conversion eligibility. SF Subdivision Code §§1396.2; 1396.3.

D. Legal Remedies for Tenants

1. Breach of the warranty of habitability – *Green v. Superior Court* (1974) 10 Cal.3d 616, 635; *Stoiber v. Honeychuck* (1980) 101 Cal. App. 3d 903, 915-16.
2. SFRO §37.10B(a)(1), (2), (3) – Tenant Harassment
 - a. Three times actual damages (or \$1,000, whichever is greater)
 - b. Emotional distress damages are trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of Section 37.9, 37.10A, or 37.10B.
 - c. A prevailing plaintiff is entitled to reasonable attorney’s fees and costs.
3. Withhold rent: Landlord probably cannot maintain a claim of unlawful detainer, but probably can maintain an ordinary civil action.

Cases (chronological order)

Gruzen v. Henry (1978) 84 Cal. App. 3d 515
Salazar v. Maradeaga (1992) 10 Cal. App. 4th Supp. 1 (LA Sup Ct App

Div)

Espinoza v. Calva (2008) 169 Cal. App. 4th 1393
Carter v. Cohen (2010) 188 Cal. App. 4th 1038

N. 7th St Assoc. v. Constante (2016) 7 Cal.App.5th Supp. 1 (LA Sup Ct App Div)

“Due to the undisputed unlawful status of the premises rented by plaintiff to defendant, their rental agreement was void, and plaintiff was barred from collecting any rent or using the unlawful detainer procedures to enforce the collection of rent. (*Gruzen, supra*, 84 Cal.App.3d at p. 518; *Salazar v. Maradeaga* (1992) 10 Cal.App.4th Supp. 1, 4 [12 Cal.Rptr.2d 676].) Put differently, if plaintiff could not collect any rent from defendant, then defendant had no obligation to pay any rent to plaintiff. Furthermore, if defendant did not owe any rent to plaintiff, the three-day notice claiming \$739.35 in past-due rent was necessarily an overstatement of defendant's rental obligation, which could only be properly calculated as zero. Since the three-day notice which was the basis for this unlawful detainer action failed to comply with the strict statutory requirements, it was invalid and could not support the action.”

4. Fraud/Failure to Disclose
5. Unfair Business Practice (Bus. & Prof. Code § 17200) – disgorgement of rent; full refund?

E. Landlord’s Response to Tenant’s Claims

1. Mitigate Damages
 - a. Diligently make Repairs
 - b. Buyout
 - c. Offer to refund a portion of Rent
2. Insurance Coverage Issues
 - a. Homeowner’s policy only.
 - b. No coverage for excess/illegal rent
3. Landlord’s Response to NOV
 - a. Acceptance of rent likely to violate CC §1942.4
 - b. Legalize Unit -Stay of the NOV and removal of the NOV if application is approved within one year. Planning Code §207.3(c)

F. Eviction Repercussions

1. Cannot Evict for Non-Payment of Rent – *North 7th Street Associates v. Constante* (2016) 7 Cal.App.5th Supp. 1, 5.
2. No Fault Evictions can Delay Merger (Avalos Legislation)

G. Legalization of Dwelling Units Installed Without A Permit.

1. SF Ordinance No. 43-14 creates a voluntary program that allows on unauthorized dwelling unit per lot that existed prior to January 1, 2013 to pursue legalization with DBI and Planning. (Planning Code § 207.3)
2. Units with current Notices of Violation are suspended if owner opts to pursue legalization.
3. Unavailable if there has been a no-fault eviction 10 years prior to the application. (5 years if OMI Eviction).
4. Capital Improvement costs for legalization cannot be passed through to tenant occupant.
5. Administrative Bulletin AB-005: Procedures for Approval of Local Equivalencies.
6. Administrative Bulletin AB-028: Pre-application and Pre-addendum Plan Review Procedures.
7. DBI v. Planning Department. Administrative exceptions
 - a. practicalities of “Revert To Original Use Permits.”