

The Small-Time Landlord vs. Big-Time Tenants' Rights

by [Elizabeth Lesly Stevens](#) —



In San Francisco, one of the toughest places in the country to find a place to live, more than 31,000 housing units — one of every 12 — now sit vacant, according to recently released census data. That's the highest vacancy rate in the region, and a 70 percent increase from a decade ago

To know one big reason why, ask Wayne Koniuk. By trade, Koniuk fashions artificial limbs for amputees. By habit, he fits prostheses at no charge for people who cannot pay. This has left him a less-than-wealthy man.

But he does have one substantial asset: a Divisadero Street building that his father, Walter, an orthotist, bought in 1970 and gave to his only son in 2001 so Wayne could run his business on the ground floor and Wayne's adult children would always have a place to live.

“For eternity,” Koniuk recalls his father saying, “my grandkids will always have a place they can go. No matter whatever happens, that building should stay in the family.”

Koniuk, who himself lives in suburban Belmont, gave a half-interest in the building to his older son in 2007 so he could evict a tenant and move in himself. But under San Francisco's extraordinarily pro-tenant housing laws, landlords can do this only once per building.

So while Koniuk desperately wants to move his younger son into the building's other four-bedroom apartment, he cannot. He is exploring legal options. Robert Murphy, who has lived there for 30 years without a lease, remains, paying \$525.82 a month.

Last spring, Koniuk offered Murphy \$45,000 to move out. Murphy's lawyer demanded \$70,000, a sum Koniuk says he does not have. Meanwhile, the city's Rent Board notified Koniuk that he was allowed to increase Murphy's monthly rent this year by \$2.63.

Murphy did not respond to several phone messages left over a two-week period. Harold Jaffe, the lawyer who wrote the demand letter, said he no longer represented Murphy.

Murphy is afforded extra protections as a renter because he is more than 60 years old. Koniuk might still be able to evict Murphy and allow his younger son, Adam, to move in by invoking the Ellis Act, which would entitle Murphy to about \$10,000 in compensation and give him a year to vacate. But doing so would impose permanent restrictions on the Divisadero building's future use, seriously depressing its value. And should 24-year-old Adam decide to move elsewhere, the Koniuks would be legally required for a decade to offer Murphy his old apartment, at his old rent. Invoking the Ellis Act would also mean that any new tenant to the unit, should Murphy decline the chance to return, would

also be entitled to Murphy's old rent amount for many years to come. So the Koniuks would likely opt to just leave it vacant.

Increasingly, small-time landlords like Koniuk are just giving up. One of his Divisadero Street neighbors has left two large apartments on the second and third floors of her building vacant for more than a decade, after a series of tenant difficulties. It's just not worth the bother, or the risk, of being legally tied to a tenant for decades.



“Vacancy rates are going up because owners have decided to take their units off the market,” said Ross Mirkarimi, a progressive member of the Board of Supervisors. He attributes that response to “peaking frustrations in dealing with the range of laws that protect tenants in San Francisco that make it difficult for small property owners to thrive.”

Perversely, that is hurting the city's renters as well, as a large percentage of the city's housing stock is allowed to just sit vacant, driving up rents that newcomers pay for market-rate housing.

San Francisco is a notoriously tough city for small-time landlords. “It is the dream of every landlord to be a landlord in the most lucrative market in the country,” said Ted Gullicksen, head of San Francisco's powerful Tenants Union. “There's no sympathy whatsoever.”

Without strong protections, tenant advocates say, only the wealthy would be able to afford to live here. Countless

longtime residents, especially the elderly, would be out on the streets.

This is a consensus view in many circles, as illustrated by a recent feature in The San Francisco Chronicle. “Throwing senior citizens out on the sidewalk is never a good idea, but it isn't stopping North Beach developer Peter Iskander,” it began.

Left unsaid was that one of the article's featured characters, Carlo Tarrone, pays \$450 a month in rent. Or, more significantly, that Tarrone in 1999 bought (half in cash) a two-unit residential building near Telegraph Hill that the real estate website Zillow values at \$1.7 million. Tarrone, whom I interviewed by phone, is by no means poor or facing homelessness.

Koniuk is not a slick developer who aims to toss widows and orphans into the street. He could sell, but he does not want to. He wants to honor his father's wishes and allow his own sons to live in his own building.

“My name is Koniuk. My sons' name is Koniuk. My father's name was Koniuk,” he said. “We should be able to move them into a building we own.”