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# Judge rules recent S.F. housing law invalid

## Tenancies in common in conflict with state

Thursday, February 14, 2002

**San Francisco Chronicle**  
CHRONICLE SECTIONS

[Rachel Gordon, Chronicle Staff Writer](#)

**San Francisco** -- A Superior Court judge ruled yesterday that a key component of a San Francisco law restricting tenancies in common is invalid because it conflicts with a state statute favoring property rights.

The ruling affects an ordinance passed by the Board of Supervisors last summer that was intended to reduce evictions in the city caused by tenancies in common, a real estate transaction in which a group of people buy and occupy a multiunit building, often resulting in the ouster of tenants.

Judge A. James Robertson II said the San Francisco law is pre-empted by the state Ellis Act, which allows property owners to take their buildings off the rental market.

"The legislation, as written, conflicts with the Ellis Act and cannot be enforced," Robertson said in a ruling from the bench.

Property owners in San Francisco stepped up use of the Ellis Act after the city put tight restrictions on owner move-in evictions.

Tenancies in common have been particularly popular with first-time home buyers, who often find the method of ownership more affordable than buying a single-family home or a condominium.

The real estate industry has been a strong foe of

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restricting tenancies in common -- commonly known as TICs -- and tenants have been mixed. Two years ago,

voters rejected a measure limiting TICs.

But the supervisors, at the urging of tenant activists, later enacted limits on TIC conversions by treating them as condominium conversions. The cap on condo conversions had been 200 a year; there had been no restrictions on the number of TICs.

The supervisors doubled the combined limit on TIC and condo conversions to 400 a year, but property owner interests said that still wasn't enough and sued.

Andrew Zacks, the lead attorney in the lawsuit against the city, said he was pleased with Robertson's ruling because it validated the "right of owners to live in their own buildings."

Robertson's ruling also left several questions unanswered, chief among them what happens in the case of buildings in which the Ellis Act isn't invoked to evict tenants. He asked both sides to prepare briefs on that point.

Robertson also suggested the Board of Supervisors could tinker with the law to essentially exclude Ellis Act buildings from the restrictions. Supervisor Jake McGoldrick, the lead sponsor of the legislation, said it was too soon to determine what the board would do.

The city has not ruled out the option of appealing Robertson's decision, said Deputy City Attorney Andrew Schwartz.

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