

BUYOUT AGREEMENT

WHEREAS, _____ as landlord/seller (hereinafter "OWNER") and _____ as tenant/buyer (hereinafter "INVESTOR") have entered into a certain Lease-Purchase Agreement dated _____, 20____, a copy of which is attached hereto and incorporated by reference as Exhibit "A" (hereinafter "AGREEMENT"), for the lease and sale of certain real property located at _____ (hereinafter "PROPERTY") and

WHEREAS, INVESTOR has subleased the Property to _____ (hereinafter "BUYER") under a certain Lease Agreement dated _____, 20____, a copy of which is attached hereto and incorporated by reference as Exhibit "B" (hereinafter "LEASE"), and

WHEREAS, INVESTOR, has offered BUYER a written option dated _____, 20____ to purchase the Property from INVESTOR for the sum of \$_____, a copy which is annexed hereto as Exhibit "C" and incorporated by reference (hereinafter "OPTION"), and

WHEREAS, BUYER has given written notice of his/her option to purchase to INVESTOR and has made diligent application for an institutional loan, and

NOW, THEREFORE, the parties agree as follows:

TERMINATION OF AGREEMENT

The AGREEMENT between Investor and Owner will hereby be terminated, and both parties shall be fully released from liability under said agreement.

Item I-2: Proposed Buyout Agreement Policy Options

December 19, 2018 | Regular Meeting of the Richmond Rent Board

Item I-2: Statement of the Issue

- On September 19, 2018, Boardmembers directed Rent Program staff to develop policy options that provide a varying degree of regulatory oversight of Buyout interactions, ranging from low-level oversight to high-level oversight.
- Based on research and case studies, staff members have prepared 3 policy options for the Board's consideration:
 - *Option 1: Low Level of Oversight*
 - *Option 2: Moderate Level of Oversight*
 - *Option 3: High Level of Oversight*
- Staff members are seeking direction from the Board regarding the proposed policy options.

Item I-2: Background

- Buyout Agreements, also known as “Cash for Keys” Agreements, may be offered by a Landlord to a Tenant to encourage the Tenant to voluntarily vacate the Rental Unit in lieu of the Landlord terminating the tenancy for Just Cause.
- Unlike no-fault evictions, Buyout Agreements in Richmond are currently unregulated, and can enable Landlords to circumvent many of the restrictions that apply when a Landlord executes a no-fault eviction.
- A seemingly large sum of money may be enticing to a Tenant, which may cause a tenant to give up rights they were not aware of having under just cause for eviction protections and make a decision on an offer without having knowledge about all of the options available.
- Anecdotal evidence from other Bay Area cities suggests Landlords may employ high-pressure tactics and intimidation to induce Tenants to sign a buyout agreement, including threatening the Tenant with eviction if they do not accept the terms of the Buyout Agreement.

Item I-2: Purpose

A Buyout Agreement Policy could establish certain requirements for Buyout Agreements, such as:

1. Require landlords to provide information to tenants on the rights tenants have prior to negotiating a Buyout Agreement
2. Require landlords to submit a copy with the Rent Program of the Notice of Tenants Rights given to the tenant
3. Establish minimum monetary amounts that may be offered in exchange for the Tenant's voluntary vacancy
4. Require Landlords to file Buyout Agreements with the Rent Board for monitoring and data collection purposes

Item I-2: Research

Based on the direction of the Rent Board, Rent Program staff used the previously presented Case Study Matrix and conducted additional research.

Case Study Matrix (Att. 2) contains information on:

- The language in disclosures provided to the Tenant prior to the Landlord offering a Buyout Agreement;
- Amount of days the Tenant has to rescind an offer;
- Requirements for filing Buyout Agreements with the City;
- Whether or not there is a minimum amount of money that must be offered in the Buyout Agreement;
- Penalties for noncompliance; and,
- The degree of administrative requirements associated with filing of Buyout Agreements and analysis of the agreement (e.g. the neighborhood of the Rental Unit and amount of compensation offered).

Criteria Matrix (Att.1)

- Criteria 1: Is there a requirement for the Landlord to give a Notice of Buyout Rights to the Tenant?
- Criteria 2: Is there a requirement for the Landlord to submit a copy of Notice of Buyout Rights to the Rent Board?
- Criteria 3: How many days does the Tenant have to rescind once the Buyout Agreement is executed?
- Criteria 4: Is there a minimum payout for a Buyout Agreement?
- Criteria 5: Is there a requirement for the Landlord to submit a Buyout Agreement with the Rent Board?
- Criteria 6: Degree of Administrative Enforcement and Duties

Item I-2: Findings

In their analysis of Buyout policies in other California cities, staff narrowed components of a Buyout Agreement Policy down to eleven integral factors that determine the degree of oversight for Buyout Agreement Policy Options. The eleven components are:

1. Access to the Buyout Agreement in the Tenant's primary language
2. Coverage of all properties under "Just Cause"
3. Policy containing Anti-Harassment language
4. Right to rescind at any time, for non-compliance with the Buyout Agreement Policy
5. Notice of Buyout Rights to the Tenant
6. Requirement to submit a copy of Notice of Buyout Rights to the Rent Board
7. Days to rescind once the Buyout Agreement is executed
8. Minimum payout for a Buyout Agreement
9. Requirement to submit a Buyout Agreement with the Rent Board
10. Administrative Enforcement and Duties to Ensure Compliance
11. Penalties for not complying with the Buyout Agreement Policy

Item I-2:
Components
of the
Proposed
Policy Options

Buyout Agreement Policy

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graph TD; A[Buyout Agreement Policy] --> B[Proposed 4 Necessary Components]; A --> C[Criteria 1 through 7];
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Proposed 4 Necessary Components

- These 4 components create a foundation for an effective Buyout Agreement Policy and represent the needs of Richmond Tenants and Landlords

Criteria 1 through 7

- Vary in degree of oversight and will be determined by the level of oversight and enforcement the Rent board wishes to accomplish

Item I-2: Methodology – Proposed 4 Necessary Components

Rent Program staff identified four components that are recommended to be incorporated into any policy aimed at regulating Buyout Agreements. These components are as follows:

1. The Buyout Agreement must be written in the Tenant's primary language
2. The Buyout Agreement policy will cover all properties under "Just Cause"
3. The Buyout Agreement policy must contain Anti-Harassment language
4. The Tenant will have the right to rescind at any time, without penalty, if the Buyout Agreement does not comply with the requirements of the regulation.

Item I-2: Methodology – Criteria 1 through 6

Example for Low Oversight

1. **Notice of Buyout Rights to the Tenant for buyout Agreements** (All cities researched)
2. **A copy of the Notice of Buyout Rights given to the Tenant must be maintained by the Landlord for five years** (Berkeley and Santa Monica)
3. **25 days to rescind** (Oakland)
4. **No minimum payout** (All cities researched, except Oakland)
5. **The Landlord must file a copy of an executed Buyout Agreement with the Rent Program within 60 days** (Los Angeles)
6. **The Rent Program will maintain a copy of all executed Buyout Agreements** (all cities researched)

Example for High Oversight

1. **Notice of Buyout Rights to the Tenant for buyout Agreements** (all cities researched)
2. **The Notice of Buyout Rights must be filed with the Rent Program prior to engaging in Buyout negotiations** (San Francisco)
3. **45 days to rescind** (Santa Monica, San Francisco, and San Jose)
4. **Establishes a minimum payout** (Oakland)
5. **The Landlord must file a copy of an executed Buyout Agreement with the Rent Program within 60 days** (Los Angeles)
6. **The Rent Program will (a) maintain submitted Buyout Agreements and copies of Notice of Buyout Rights; (b) contact the Tenant identified on a submitted copy of a Notice of Buyout Rights; and (c) maintain a database, showing data on the compensation amount and neighborhood of Buyout Agreements** (mix from San Francisco, Berkeley, Santa Monica)

Item I-2: Methodology – Criteria 7: Penalties for Non- Compliance

Low Oversight Option:

This option does not include penalties for Landlords that fail to conform with the Buyout Agreement Ordinance (San Jose)

Moderate Oversight Option:

The Tenant has the right to bring a civil action against the Landlord for actual damages and statutory damages not to exceed \$500 dollars per violation (Oakland and San Francisco)

High Level Oversight Option:

The Tenant has the right to bring a civil action against the Landlord for actual damages and statutory damages not to exceed \$ 1,000 dollars per violation (Oakland and San Francisco)

Item I-2: Policy Questions determining Criteria 1 through 7

The remaining seven components are more discretionary and impact the degree of regulation. Staff members are seeking specific direction from the Board on the following seven policy questions:

1. Should the Landlord be required to give a Notice of Buyout Rights to the Tenant?
2. Should the Landlord be required to submit a copy of Notice of Buyout Rights to the Rent Board and if so when?
3. How many days should the Tenant be given to rescind once the Buyout Agreement is executed?
4. Should there be a minimum payout for a Buyout Agreement?
5. Should the Landlord be required to submit a Buyout Agreement with the Rent Board and if so when?
6. What is the degree of Administrative Enforcement and Duties the Rent Board wishes to adopt?
7. Should there be penalties for violating the Buyout Agreement Policy?

Proposed Policy Options

NOTE: The policy options presented are not fixed; the Rent Board may mix-and-match different components to create its own policy that is tailored to the needs of Richmond Residents.

Option 1: Low Level of Oversight

OPTION 1

1. The Landlord must give a Notice of Buyout Rights to the Tenant before the Buyout negotiation begins.
2. A copy of the Notice of Buyout Rights given to the Tenant must be maintained by the Landlord for five years (and is not required to be filed with the Rent Program).
3. The Tenant has 25 days to rescind an executed Buyout Agreement.
4. This policy option has no minimum payout requirement for a Buyout Agreement.
5. The Landlord must file a copy of an executed Buyout Agreement with the Rent Program within 60 days.
6. The Rent Program will maintain a copy of all executed Buyout Agreements.
7. This option does not include penalties for Landlords that fail to conform with the Buyout Agreement Ordinance.

Option 2: Moderate Level of Oversight

OPTION 2

1. Prior to engaging in Buyout negotiations, the Landlord must give a Notice of Buyout Rights to the Tenant.
2. If the parties execute a Buyout Agreement, the Landlord must file a copy of the Notice of Buyout Rights with the Rent Program.
3. The Tenant has 30 days to rescind an executed Buyout Agreement.
4. All Buyout Agreements must offer what the Tenant would have received as a Permanent Relocation Payment due to termination of tenancy for Owner Move In, for a two plus bedroom unit as a Qualified Tenant Household.
5. The Landlord must file a copy of an executed Buyout Agreement with the Rent Program within 60 days.
6. The Rent Program will maintain a copy of all executed Buyout Agreements and Notice of Buyout Rights.
7. The Tenant has the right to bring a civil action against the Landlord for actual damages and statutory damages not to exceed \$500 dollars per violation.

Option 3: High Level of Oversight

OPTION 3

1. Prior to engaging in Buyout negotiations, the Landlord must give a Notice of Buyout Rights to the Tenant.
2. The Landlord must file a copy of the Notice of Buyout Rights with the Rent Program prior to engaging in Buyout negotiations.
3. The Tenant has 45 days to rescind an executed Buyout Agreement.
4. All Buyout Agreements must offer what the Tenant would have received as a Permanent Relocation Payment due to termination of tenancy for Withdrawal from the Rental Market, for a two plus bedroom unit as a Qualified Tenant Household.
5. The Landlord must file a copy of an executed Buyout Agreement with the Rent Program within 60 days.
6. The Rent Program will (a) maintain a copy of all submitted Buyout Agreements and copies of Notice of Buyout Rights; (b) contact the Tenant identified on a submitted copy of a Notice of Buyout Rights; and (c) maintain a database that may be public, showing data on the compensation amount and neighborhood of Buyout Agreements (consistent with State law).
7. The Tenant has the right to bring a civil action against the Landlord for actual damages and statutory damages not to exceed \$ 1,000 dollars per violation.

Item I-2: Proposed Timeline and Next Steps

(1) Staff will present the Rent Board's selected policy option during a study session at a meeting of the Richmond City Council in December 2018 or January 2019.

(2) Following the study session, it is anticipated Rent Program staff will work with City staff to develop a Buyout Agreement Ordinance.

(3) Staff will present the Buyout Agreement Ordinance to the City Council for potential adoption.

Item I-2: Recommended Action

RECEIVE Tenant Buyout Agreement Policy Options and **DIRECT** staff to (1) present the Rent Board's selected policy option during a study session at a meeting of the City of Richmond City Council and (2) work with City staff to develop a Buyout Agreement Ordinance – Rent Program (Nicolas Traylor/Paige Roosa 620-6564).