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Selling With A Tenant

By Ronald R. Rossi

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Anyone who has ever sold a property occupied by a tenant has run into the difficulties involved in selling a house that's being rented at the time it's put up for sale. When can you show it? How can you have an open house? When can you reasonably expect to be able to enter the property?

Finally, an appellate case answered these and other important questions. The ruling of the Los Angeles Superior Court in ***Dromy v. Lukovsky*** allowing landlords to enter dwellings for purposes of an open house was affirmed by the Court of Appeals on August 30, 2013.

The landlord in ***Dromy*** contended that the tenant refused to permit open houses on weekends, which made the property much more difficult to sell. The parties more or less stipulated that it is the custom and practice in the residential real estate community to conduct open houses on the weekends in order to market a listed property as effectively as possible and expose it to the maximum number of prospective buyers. The lower court found and ordered that a landlord's designated real estate agent should be entitled to hold two open houses per month on weekends between the hours of 1:00 p.m. and 4:30 p.m., with an agent present during each open house.

Finally, the court ordered that a landlord had to give a tenant ten days' advance notice, either in writing or via email, of the proposed weekend open houses and that the tenant had to respond within 48 hours of receiving the notice, either acknowledging the proposed dates or providing alternative weekend dates.

The tenant appealed the trial court's decision but lost on appeal. The Appellate Court sided with the lower court, citing Section 1954 of the Civil Code, which forbids landlords from entering a dwelling except under certain circumstances. A property being up for sale qualifies as one of those exceptions. Section 1954(2)

allows a landlord to show a property to prospective or actual purchasers during normal business hours. The Appellate Court then defined what "normal business hours" meant in the context of this Code section, noting that real estate professionals handling residential real estate customarily do hold open houses on the weekends, thereby making weekends "normal business hours" for this purpose. The Court contended that normal business hours could mean, and did mean in this case, Saturdays and Sundays.

This case helps define and establish the rights of landlords and their real estate agents in terms of being allowed to make a property reasonably available and to show it at times most likely to lead to a sale. If landlords and agents run into any difficulty while following these new court-sanctioned guidelines, there are now legal grounds for requiring tenants to comply with the showing and marketing of property during "normal business hours" on the weekends.



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

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