

Courtside Newsletter

Court Ruling Allows Landlords to Conduct Open Houses on Weekends

BY: KELLY A. NEAVEL, ATTORNEY AT LAW
CASEY MCINTOSH, PARALEGAL



A recent decision was handed down by the California Appellate Court addressing a concern many landlords and their listing agents have undoubtedly encountered in years past. In *Dromy v. Lukovsky*, the issue was raised whether a landlord has the right to hold open houses on weekends when attempting to sell a tenant-occupied property.

In this case, Plaintiff David Dromy (“Plaintiff” or “Dromy”) leased a Santa Monica condominium to Defendant Marina Lukovsky (“Defendant” or “Lukovsky”). In or about 2010, Dromy listed the property for sale through listing agent Dafna Milstein (“Milstein”). Although Lukovsky allowed Milstein to privately show the property to prospective purchasers by appointment, she refused to permit open houses on weekends.

In response to what Dromy believed to be an undue barrier to the sale of the property, he filed a suit for declaratory relief, relying on California Civil Code section 1954. Dromy filed a motion for summary judgment, ascertaining that there were no issues of triable fact. There was only an issue of law, which was the interpretation of the language in section 1954 and therefore up to the court to decide. In Plaintiff’s motion, Milstein declared, “Ms. Lukovsky’s refusal to permit weekend open house showings at the subject property has made it much more difficult to find a prospective purchaser. The custom and practice in the residential real estate community is to conduct weekend open houses in order to market properties more effectively and expose listed properties to the general public.”

The trial court agreed with Plaintiff and ruled in his favor, indicating that he should be allowed to hold open houses on weekends. However, the court still needed to address conflicting policies between landlords and tenants. Landlords have a strong interest in the ability to sell their property, should they choose to do so, and the law favors this free alienability of property. Conversely, tenants have the right to the quiet enjoyment of their property. In its judgment, the trial court attempted to find a balance between these two liberties.

Pursuant to California Civil Code Section 1954(b), a landlord may only enter the premises he or she is leasing during normal business hours, unless the tenant consents to an entry during other than normal business hours. However, in every lease agreement there is an implied covenant of quiet enjoyment, whereby the landlord impliedly covenants that the tenant shall have

quiet enjoyment and possession of the premises. The dispute in the case at issue here is what the phrase “normal business hours” means under the statute.

The trial court’s ruling attempted to find a balance between the competing policies of the tenant’s right to quiet enjoyment, and the landlord’s right to sell the property. In its judgment, the trial court stated that a landlord has the right to hold open houses on the weekends. However, the court outlined four requirements for doing so:

1. A landlord can only hold two (2) weekend open houses per month.
2. The open houses may only be from 1:00 p.m.-4:30 p.m.
3. The designated agent must be at the property during the open house; the tenant may also be present.
4. The agent must provide the tenant with notification of that date and time of the open house at least 10 days prior to the open house showing. The tenant has 48 hours from receipt of that notice to respond, either acknowledging the open house or proposing a new weekend date.

The trial court believed this would satisfy the landlord’s right to effectively market the property, as well as the tenant’s right for quiet enjoyment. It also provides safeguards designed to address any tenant concerns regarding third parties having access to his or her personal property.

Defendant did not agree with this judgment and filed an appeal, contending that it violated Civil Code Section 1954. In its review, the Appellate Court looked at the language and legislative history surrounding Civil Code Section 1954, which was enacted in 1975 pursuant to Senate Bill 314. The California Association of REALTORS® (C.A.R.) was a strong proponent of SB 314, which addressed a deficiency in statutory law in which there were no terms set forth defining the rights of landlords and tenants relating to entry into a property by a landlord.

The Court looked to the time period in which the statute was enacted in order to interpret the phrase still at issue: “normal business hours.” In 1975, Black’s Law Dictionary defined “normal business hours” as being those hours during which person in the community generally keep their places open for the transaction of business. In the instant action, the “community” includes licensed professionals working in the residential real estate business. Further, it was established that it is common practice for real estate professionals to hold open houses on weekends, since most prospective buyers work during weekdays. Therefore, Milstein’s

original declaration in the trial court action held to be true.

The Appellate Court also looked to the Uniform Residential Landlord and Tenant Act (“Act”), which was relied upon during the drafting of SB 314. Pursuant to the Act, “a tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to...exhibit the dwelling unit to prospective or actual purchasers, mortgagees, [or] tenants...” It further provides that a landlord “shall not abuse the right of access or use it to harass the tenant” and that a landlord “may only enter at reasonable times.”

With these facts in mind, the Appellate Court upheld the trial court’s decision, stating that the trial court’s judgment is reasonable under the facts and circumstances and that it complies with the requirements of Civil Code section 1954(b).

What this means for real estate practitioners:

There have been no previously published California court decisions determining whether a landlord’s right to enter leased premises to show a property during “normal business hours” includes weekends. The decision handed down in *Dromy v. Lukovsky* not only balances conflicting policies for tenants and landlords, it also clears up any confusion or difficulties that listing agents may have had in the past when attempting to list a tenant-occupied property.

C.A.R. recommends that listing agents follow the rules set forth in *Dromy* when scheduling open houses:

1. A landlord can only hold two (2) weekend open houses per month.
2. The open houses may only be from 1:00 p.m.-4:30 p.m.
3. The designated agent must be at the property during the open house; the tenant may also be present.
4. The agent must provide the tenant with notification of that date and time of the open house at least 10 days prior to the open house showing. The tenant has 48 hours from receipt of that notice to respond, either acknowledging the open house or proposing a new weekend date

This decision may enable listing agents to better market tenant-occupied properties in the future, now that they know their specific rights and have guidelines to follow. As always, if a listing agent has any questions or concerns regarding this practice, he or she should either consult with his or her broker or qualified legal counsel.

* * *

This Newsletter is a copyrighted publication and may not be reproduced or transmitted in any form or by any means without written permission. This article does not necessarily reflect the point of view of The Giardinelli Law Group, APC, or other person or entity who publishes it. This article provides legal information abridged from statutes, court decisions, and administrative rulings and contains opinions of the writers. Legal information is not the same as legal advice, which is the application of law to an individual’s specific circumstances. Although every effort is made to ensure the information is accurate and useful, it is recommended that you consult with a lawyer to obtain professional assurance that the information provided and your interpretation of it is appropriate for a particular situation. To request further information or to comment on this newsletter, contact us at (951) 244-1856 and visit our website at www.glawgroupapc.com.