California Apartment Association

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Date: September 9, 2015

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

***Re: T&A Drolapas & Sons, LP v. City and County of San Francisco,* Court of Appeal Case No. A139432, Superior Court Case No. CUD-12-511944**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to Rule 8.500(g), the California Apartment Association respectfully submits this letter as amicus curiae in support of the petition for review of the decision of the California Court of Appeal, First Appellate District, Division 4, in *T&A Drolapas & Sons, LP v. City and County of San Francisco*. Review is necessary to "settle an important question of law." California Rules of Court 8.500(b).

The California Apartment Association is the largest statewide rental housing trade association in the country, representing more than 50,000 owners and operators who are responsible for nearly two million rental housing units throughout California. CAA has the goal of promoting fairness and equality in the rental of residential housing and aiding in the availability of high quality rental housing in California. CAA has advocated on behalf of rental housing providers in legislative, judicial and other forums in California and nationally. Additionally, CAA has appeared on numerous occasions before this Court, as well as the California Appellate Courts in a friend of the court capacity to assist in analysis and promote the interests of its members.

The California Apartment Association was one of the original proponents of the Costa-Hawkins Rental Housing Act, Civil Code sections 1954.50, *et seq.* (the "Costa-Hawkins Act"), which allows owners of residential real property to set the rental rate of a unit, despite rent control, after the tenant has voluntarily vacated, abandoned or be lawfully evicted from the premises. The decision of the Court of Appeal is contrary to the intent behind the Costa-Hawkins Act.

Prior to Costa-Hawkins, several Cities imposed severe price controls on vacant units. The purpose of Costa-Hawkins was to maintain the protections of rent control for the duration of a tenancy, but create a "light at the end of the tunnel" for owners of rental property, by allowing them to raise the rent to market levels once the original tenants had departed. The decision of the Court of Appeal would double the length of that tunnel – by granting the protections of rent control not only to the original adult tenants, but to also to their children and infants. Essentially, any baby that moves into an apartment in San Francisco is eligible for a lifetime tenancy.

CAA agrees with and joins in the arguments in Appellants' Petition for Review. While the language of Costa-Hawkins is not a model of clarity, there is nothing in the legislative history that suggests an intent to consider minors or occupants who are not named in the agreement to be "original occupant" who "took possession of the unit pursuant to the rental agreement with the owner." The statute requires that an original occupant take possession of the rental unit under the rental agreement. The concept of taking possession is a legal term of art that does not simply mean moving into a rental unit with the tenant who signed the rental agreement. When a tenancy begins, the owner of the unit delivers possession to the parties who signed the lease, not to their minor children.

If upheld, Court of Appeal's decision will have significant unintended consequences for landlords and occupants who are minors. If minors have a right to possession and to the benefits of rent control that continues when their parents move out, landlords be required to treat those minors as adult tenants in many respects. The unfortunate result is that minors will begin receiving eviction notices and will be named in unlawful detainer complaints. Neither landlords nor adult tenants with minor children would find this desirable. Clearly, the Legislature could not have intended for this to occur.

As it stands, the decision issued by the Court of Appeal undercuts the purpose behind the Costa-Hawkins Act by holding that a minor, non-party to a rental agreement may be considered an original occupant. The purpose of the Costa-Hawkins Act is to prevent rent controlled tenancies to pass from tenant to subtenant, including from friend to friend or generation to generation. An interpretation that permits a minor to acquire the rights of an original tenant is inconsistent with that objective.

Not only does this interpretation create an economic penalty for owners of rent control property, it defeats the intent of the Legislature and does nothing to advance the goal of vacancy decontrol under the Costa-Hawkins Act. If applied, this flawed interpretation will cause CAA's members in rent control communities statewide to suffer the very economic hardship that the Costa-Hawkins Act was designed to prevent.

For these reasons, and the reasons set forth in the Petition for Review, CAA respectfully requests that this Court grant review of the *Mosser* decision and provide guidance on this important case.

Respectfully submitted,

cc:

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