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## **Superior Court Rules Award of Attorney Fees to Tenants Unconstitutional Under Proposition M**

### **Section of Proposition M Concerning Right of Landlords to Free Speech Also Ruled Unconstitutionally Vague**

**San Francisco, May 19, 2009** -- Judge Charlotte W. Woolard of the San Francisco Superior Court ruled today in favor of a challenge to Proposition M, passed by San Francisco voters on November 4, 2008.

The lawsuit challenging Proposition M was brought by a coalition of individuals and housing industry organizations including the San Francisco Apartment Association, the San Francisco Association of Realtors and the Coalition for Better Housing.

Proposition M, spearheaded by Supervisor Chris Daly, amended the San Francisco Rent Stabilization and Arbitration Ordinance, under the guise of prohibiting harassment of tenants by landlords. It also authorized the recovery of attorney's fees to tenants who prevailed in an eviction lawsuit without providing similar rights to landlords who won their eviction suits.

Judge Woolard ruled that the attorneys' fees provision was a violation of the equal protection clause because it created a single class of litigants or a single class of lawsuits. At the same time, Proposition M deprives landlords of any right to collect their fees should they prevail. This unequal treatment is unconstitutional.

"San Francisco's tenant lawyer stimulus package is dead", declared Clifford E. Fried, one of the attorneys for the group that challenged Proposition M. "The attorneys fees component of the new law was nothing

more than another way for tenant lawyers to profit at the expense of landlords trying to navigate the complex set of rules that govern landlord tenant relationships in San Francisco", said Fried.

Proposition M also prohibits 15 different kinds of conduct and speech by a landlord, when done in bad faith, without honest intent or with ulterior reason.

Judge Woolard also declared that portions of the tenant harassment law were unconstitutionally vague. Proposition M sought to prohibit landlord conduct undertaken "with ulterior motive or without honest intent". The language was an attempt to prevent landlords from communicating with their tenants with the intent of making an offer to buy out a tenant in exchange for offers of payments. Judge Woolard's ruling validates the challengers' argument that such a prohibition is a violation of a landlord's First Amendment right of free speech.

Left standing, however, is the portion of Proposition M that prohibits conduct carried out by the landlord in "bad faith".

"Overall, my clients are satisfied with Judge Woolard's rulings", said Clifford E. Fried. "My clients' challenge was well worth the effort." However, the challengers still have concerns that landlords will not understand the meaning of "bad faith" harassment. The prohibition against bad faith harassment implies that the proscribed conduct, when undertaken in good faith, is permissible.

"We are extremely please with the court's ruling today" said Janan New, Executive Director of the San Francisco Apartment Association. Judge Woolard clearly saw that the intent of this ballot measure is punitive and would prevent landlords from simply communicating with their tenants except through an attorney. It makes no sense to prohibit what is 99% of the time a mutually positive relationship", continued New.

The Court of Appeal made it clear in *Baba v. San Francisco Board of Supervisors* that landlords have free speech rights, and in its 2002 decision gave the green light to landlords to approach their tenants with offers to buy them out.

"We already argued and won this case in 2002", said John Baba, another attorney for the petitioners. "It's unfortunate that the City is forced once again to defend it while facing a multi-million dollar budget deficit and being forced to cut jobs", continued Baba.