

NOV
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The Advocate for
Berkeley's Rental Housing Providers

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Getting More Value Out of Your BPOA Membership

Dan Lieberman, President, BPOA

The other day, when I was reviewing the turnout to our recent events, I was somewhat surprised at how few of our members are taking advantage of the many services BPOA has to offer. I know you are likely juggling property issues, tenant questions, and perhaps even keeping an eye out for the latest missive from the rent board. But that is exactly why you can't afford not to participate in the meetings and webinars BPOA puts on.

Navigating an Ever-Changing Landscape

As you well know, it's rarely a dull day in Berkeley when it comes to housing policy. Let's face it — Berkeley's laws are a moving target. New rules pop up all the time, and it can be exhausting trying to keep up on your own. That's where we come in. BPOA is all about making sure you are up to date with the latest regulations

In January, we did a preview of the 2024 laws and what you need to know. In May, we had an attorney speak on current trends in Berkeley and he gave specific advice on how to operate in the current environment. Recently, we held a webinar on the insurance crisis. This was not some existential talk, but had specific advice regarding what items you needed to do now to help put the odds in your favor that your insurance would get renewed and not cancelled. All in all, BPOA has presented over 15 webinars to date on these critical topics. How many did you attend?

Education and Support: More than Just Information

BPOA's workshops and training programs aren't just about the details of rent control or property insurance, they are designed to empower you with practical, useful information that makes your life easier. These include leasing strategies for a softer rental market, property management best practices, improving operational efficiencies, and dealing with issues like mold.

We have had a number of guest experts on topics like adding ADUs, tax strategies, how to permit non-conforming units, and the latest twists in Fair Housing laws and what you need to know. All of this is delivered over an entire year for less than the cost of an hour or two of an attorney's time.

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COMING ATTRACTIONS

For December & January

Webinar: Key Leasing Trends for Residential Rental Properties
Thursday, December 5, 3:00 PM

Event: BPOA & BHRC Holiday Party
Thursday, December 12, 5:30 PM

Event: On-Site Owner Discussion Group
Thursday, January 23, 2:00 PM

See page 14 for details & more events!

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Editorial

Why California Doesn't Work

Albert Sukoff, Editor

BPOA Monthly is a regular publication of the Berkeley Property Owners Association, a trade association dedicated to assisting rental housing providers with upkeep and management of residential rental property and coping with Berkeley's rent law.

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About the Newsletter

Our articles are contributed on a volunteer basis by members and other interested parties, although we do accept paid advertising. We are always happy to include material submitted by members and welcome suggestions on how to improve our publication.

All articles in this publication represent the author's viewpoint and not necessarily the position of our organization.

Direct comments and material to our Bancroft Way office or to bpoa@bpoa.org

Last month I lamented our choice in this year's presidential election. Actually, I find the whole election distressing. We are once again electing which self-proclaimed saviors will tax away our money so that they may save us. We are ruled by a cabal of [mostly] well-meaning do-gooders who really haven't a clue as to how to solve the problems they perceive. Sir Ernest Benn was a British publisher, writer and political publicist. This quote attributed to him is in my quote collection:

Politics is the art of looking for trouble, finding it whether it exists or not, diagnosing it incorrectly, and applying the wrong remedy.

Complaining about rent control in a newsletter aimed at rental property owners who are subject to severe rent controls is akin to beating the proverbial dead horse. However, things have changed and new gripes are appropriate. *We are no longer in a landlord-favored rental housing market.* Rents are down and vacancies are up. Costs are up and cash flow is down. Interest rates are through the roof. Insurance policies are barely attainable.

Even the Berkeley rent control ordinance recognizes a five-percent vacancy rate as a normally functioning market. The ordinance says that if there is a five-percent vacancy rate, the Rent Board may recommend that the City Council suspend rent controls. The vacancy rate has been over five percent since Covid. Nevertheless, the Rent Board is not about to recommend suspending controls. The Rent Board will never recommend suspension of rent controls. And if they were to do so, the City Council would not suspend rent controls. One thing every politician knows is that you can never take away a benefit once granted. The point here is that even the Berkeley rent control advocates recognized that there is such a thing as a normal market in which rent controls are inappropriate.

The argument against continuing rent controls notwithstanding, the liberal/progressive/leftist cabal sees the perception of a down economy as an excuse to make matters even more difficult for rental housing owners. If Proposition 33 passes, no one will build more rental housing in California and no one will want to buy existing units except at significantly depressed prices.

I have said it before: you people are heroes. You deserve a ticker-tape parade, not another poke in the eye. You have chosen to use your personal resources to house people unable to own a place to live. To do this, you have given up opportunities to otherwise benefit your life. That you get a return for doing this is not shameful. It is honorable and should be recognized as such.

Paradoxically, whether you do well or poorly with your real estate investments is not a function of your greed or benevolence. It mainly is a function of public policy. Why does a house in the Berkeley Hills which sold for \$30,000 in 1970 sell for over \$2,000,000 today? *Steadily increasing demand over time without a concomitant increase in supply is the one and only cause of the California housing crisis.* That there is too little housing is due to deliberate and conscious decisions made by government entities. Whatever the situation, you did not create it. You just respond. When you do well, they want a cut. How about a one-percent transfer tax on the sale of real estate? When things go sour, they still want

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❖ THE COALITION CORNER ❖

Krista Gulbransen, BRHC Executive Director

**The Berkeley Rental Housing Coalition (BRHC)
is the political and legal voice of Berkeley's rental housing providers.**

By the time some of you read this, November 5 will have come and gone. We will provide further updates once the results are finalized and will keep you informed of any changes affecting your business.

In the meantime, let's review what's on tap and upcoming for 2025. The state legislators finished out the legislative year and the Governor signed a slew of rental housing-related bills. With help from the team of Bornstein Law, let's take a look at what you'll need to comply with starting in 2025.

Increased Transparency for Security Deposit Accounting

You should have gotten the memo by now that with certain exceptions, security deposits are limited to one month's rent. Lawmakers have now further meddled with the security deposit rules with a new subsection of Civil Code section 1950.5. This new part of the law will require rental housing providers to photograph the rental unit immediately before a tenant moves in, at the end of the tenancy, and before and after any necessary repairs or cleaning. Interestingly, there are two components to this.

- **Pre-repair and post-repair photographs: This law goes into effect starting April 1, 2025.**
- **Pre-move-in photographs: This applies to any tenancy that starts on or after July 1, 2025.**

Generally speaking, BPOA and the lawyers have always recommended taking extensive photos to document the "before and after" condition of the property. Ordinarily, we would advise owners to be thorough in their security deposit accounting, considering what constitutes damage and what is "normal wear and tear." This can be an ambiguous term, but BPOA provides guidance to our members with a handy security deposit deduction guide (find it online at www.bpoa.org)

The law also puts an exclamation point on the fact that the cost of cleaning services cannot be deducted from the security deposit *except* when it is reasonably necessary to restore the unit to its original condition at the inception of the tenancy.

While we agree that there should be transparency in security deposit accounting, we know that a staggering number of landlords and property managers do not get it right. While every landlord seems to know how to take

a security deposit, comparatively fewer know what to do with it when the tenant vacates.

Under existing rules surrounding security deposits, there is ample opportunity for tenants to sue the landlord. If it is demonstrated that the landlord withholds the security deposit in bad faith, the penalties can exceed the amount of the security deposit. That's right — when housing providers hoard the security deposit, they could be penalized above and beyond the dollar amount the tenant paid.

The new law adds a layer of procedural requirements to security deposit accounting to those who may be already misinformed. BPOA will be providing extensive guidance and educational classes on how to properly adhere to the modifications of this law.

Tenant Screening Fee Modifications and New Requirements

It's worth reminding housing providers that under existing law, landlords cannot profit from screening prospective tenants. The fee charged can only cover the actual cost of obtaining information about the applicant. Moreover, the rental applicant must be provided with an itemized receipt detailing how the screening fee was used. Rental housing providers and their agents may not charge an applicant screening fee when they know or should have known that no rental unit was available at the time or that a rental unit was going to be available within a reasonable period of time. Under the existing regulatory regime, rental applicants can request a copy of the consumer credit report used by the property owner or their agent to determine their creditworthiness.

The new law does not make sharing credit reports an optional action. Now, the landlord or their agent must provide a copy of the credit report to the prospective tenant, within 7 days of receiving it.

Seems reasonable enough, but every time new administrative burdens are imposed on housing providers, there is an additional cost.

The most challenging part of the new law says that when a tenant screening fee is charged, the first applicant to meet the landlord's established screening criteria *must be approved for tenancy*. In other words, the rental housing provider evaluates applications in the order in which

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Man Fined for *Not* Evicting Family

Christian Britschgi, Reason.Com, September 24, 2024

California County Fines Man \$120,000 for Refusing to Evict a Family from His Property

Our lead story this week looks at a darkly ironic case out of California, where government overregulation has created a housing cost crisis; government officials are penalizing a winery owner for trying to solve that cost crisis for his employee.

Hundreds of people live in trailers and campers on the streets of Santa Clara County, California — a very visible sign of the ultra-expensive county's homelessness crisis.

Despite the scale of vehicular homelessness in the county, county officials have spent years focusing their enforcement actions on a single trailer parked on private property.

For years now, winery owner Michael Ballard has allowed his longtime vineyard manager, Marcelino Martinez, and his family to live rent-free in a trailer parked on the winery's property.

County officials say this violates a county ordinance prohibiting recreational vehicles (RVs) parked on residential parcels from being used as dwelling units. Therefore, Martinez's trailer has got to go.

Ballard has been trying to fix the violation by building a permanent home for Martinez and his family on the property. But getting all the needed permits from the county for that home has taken years.

In the interim, Ballard has refused to evict Martinez's family from the property.

"I'm not going to remove this trailer because that will cause them to be homeless and I'd be putting this family on the street and I'm not going to do that," Ballard tells *Reason*.

In response, the county has issued Ballard daily fines for every day he refuses to remove the trailer. These fines total some \$120,000.

Ballard is now suing the county in federal court, arguing the fines violate the U.S. Constitution's prohibition on excessive fines.

Background

Ballard and his wife have owned and operated the Savannah-Chanelle Vineyards since the late 1990s. For almost all that time, he's employed Martinez as his vineyard manager.

In 2013, Martinez asked Ballard if he'd be able to move a trailer he owned onto the winery property and live there

with his family. Ballard, aware of Martinez's limited options for finding housing in the ultra-expensive county, agreed.

Average home prices in Santa Clara County are \$1.5 million today, according to Zillow. The median apartment rents for \$3,200.

According to the county's 2023 Point-in-Time count, 9,903 people are homeless in Santa Clara County — which includes the city of San Jose and other pricy Silicon Valley communities. Nearly 10 percent of the county's homeless population lives in campers or RVs.

For several years, Martinez and his family lived on Ballard's property, where Ballard and his wife also live, without incident.

But in 2017, a county code enforcement official, while conducting an inspection of the Ballard's property, noticed the trailer. A couple of weeks later, Ballard received a letter saying he had to either remove the trailer or evict Martinez and his family from it.

Coming Into Compliance

Neither option was acceptable to Ballard.

Kicking Martinez off the property "would force him to leave the area entirely. That would result in him losing his job here, his kids having to leave school," he says. "I knew that would be traumatic for the Martinez family."

At first, Ballard tried to get permits that would legalize Martinez's RV but the county wouldn't budge — citing its ban on using RVs as dwelling units on residential land.

Next, Ballard sought to build an accessory dwelling unit on the property for Martinez that would serve as a legal alternative for his trailer.

The county did not make that easy either. Ballard applied for the needed permits for the ADU and a septic system in May 2019. While that application was being processed, COVID hit, leading to the shutdown of Ballard's winery and the county permitting office.

It wasn't until October 2022 that Ballard eventually received his entitlements for the ADU. He's still waiting on some final county approvals of a fire suppression system before Martinez and his family can move into it.

And while Ballard was waiting on his permits for the ADU, the county kept issuing him fines for every day that

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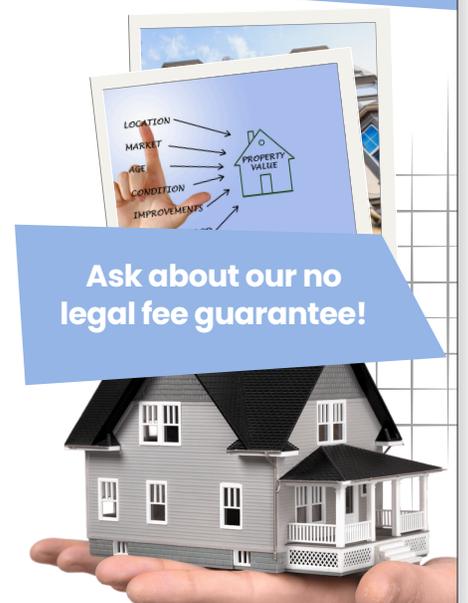


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San Francisco Inches Closer to Expanding Rent Control

J.K. Dineen, San Francisco Chronicle, October 2, 2024

With statewide polling showing California voters essentially deadlocked on a proposition to allow cities to expand rent control to newer buildings, San Francisco lawmakers continue to prepare to spring into action if the ballot measure passes.

On Monday, the Board of Supervisors Land Use and Transportation Committee, in a 2-1 vote, passed legislation that would expand rent control to about 100,000 San Francisco renters who don't currently have rental price protections. The committee sent the legislation to the full Board of Supervisors with a positive recommendation.

"This ordinance will deliver stable housing and freedom from arbitrary price increases and price gouging to roughly 100,000 San Francisco renters who are denied their rights by this outdated state law," said Board of Supervisors President Aaron Peskin, who introduced the legislation.

Both the local and state rent control initiatives are the latest in a seemingly unending battle between tenants rights groups and real estate interests over whether to expand rent protections.

Next month, for the third time in six years, California voters will be asked whether to repeal the statewide Costa-Hawkins Rental Housing Act, which says cities cannot impose rent control on housing built after Feb. 1, 1995, or on single-family homes or separately owned multifamily units like condos.

The current statewide measure, Prop. 33, would repeal Costa-Hawkins and allow local governments to set their own rent control laws, and the state wouldn't be allowed to interfere with that. A recent poll by the University of Southern California, California State University Long Beach and Cal Poly Pomona found support for Prop. 33 to be up to 37%, with 33% of respondents against it, while 30% were undecided.

While the San Francisco law would not apply to new construction — it would cover multifamily properties that were built between June 13, 1979, and Nov. 5, 2024 — developers and housing advocates have said that it would have a chilling effect on investors and builders who have, by and large, stayed away from San Francisco since the pandemic. That has led to a huge drop in housing production, making it more and more likely that the city could

fail to meet its state-mandated goal of producing 82,000 housing units by 2031.

Charley Goss, of the San Francisco Apartment Association, said Peskin's ordinance is being "pushed through in the middle of campaign season without any study or analysis as to how the development of new housing will be impacted."

"This ordinance, without properly studying the impact on development of new housing, is bad anti-housing policy that will effectively stop new housing from being created."

"It will make it all but impossible for San Francisco to meet its housing goals and mandates," he said.

Peskin said the legislation intentionally left out new construction, and accused the large landlord and real estate industry of "creating a bogeyman that absolutely does not exist."

"It will make it all but impossible for San Francisco to meet its housing goals and mandates"

"This legislation proposed something that is very simple and very elegant," he said. "To call this anti-housing policy is absolute hogwash."

Supervisor Dean Preston, a former tenants rights attorney who is co-sponsoring the legislation, said the current rules for which buildings are protected by rent control and which are not is "completely arbitrary law."

"We can have two buildings next to each other in San Francisco: one building that has a set of protections and another building that doesn't," he said. "There is no policy justification whatsoever."

Supervisor Myrna Melgar, who heads up the committee, voted against moving the legislation forward. She said while she agreed with its goals, she had legal questions about how it would impact buildings with deed-restricted affordable units.

Housing Action Coalition Executive Director Corey Smith speculated that the legislation would inevitably be followed by an effort to apply rent control to all new housing.

"Given that this board has previously introduced legislation that would apply rent control to all new housing the general belief is that would be the next step," he said. "It would overall have a cooling impact on the ability to get projects financed and built here in San Francisco."

San Francisco Scales Back Proposed Rent Control Expansion

Aldo Toledo, San Francisco Chronicle, October 10, 2024

An expansion of rent control still could be coming to San Francisco. But it would be considerably less far reaching than a previous proposal.

The Board of Supervisors on Tuesday unanimously passed a scaled-back version of a law that would extend rent control to about 40,000 renters should California voters in November repeal a state law that prohibits cities from expanding rent control to newer buildings.

The legislation, proposed by Board of Supervisors President Aaron Peskin, was a significant reduction in scope from an earlier version, which would have affected about 100,000 renters. Peskin's original legislation would have applied to any apartment building built before 2024. The new version applies only to rental buildings completed before 1994.

"More than a critical tenant protection, rent control is the foundation of stable communities across San Francisco," Peskin said in a statement. "For tens of thousands of long-term renters, rent control provides consistent access to healthcare, childcare, and public schools."

Next month, California voters will be asked whether to repeal the statewide Costa-Hawkins Rental Housing Act, which says cities cannot impose rent control on housing built after Feb. 1, 1995, or on single-family homes or separately owned multifamily units like condos. It's the third time in six years that voters are weighing in on the issue.

The current statewide measure, Prop 33, would repeal Costa-Hawkins and allow local governments to set their own rent control laws, without state interference. A recent poll by the University of Southern California, California State University Long Beach and Cal Poly Pomona found support for Prop 33 to be up to 37%, with 33% of respondents against it, while 30% were undecided. The measure needs a simple majority to pass.

The San Francisco law would not apply to new construction — it would cover multifamily properties that were built between June 13, 1979, and Jan. 1, 1994. Developers and housing advocates had opposed earlier versions that included multifamily properties built before 2024, arguing that it would have a chilling effect on investors and builders who have, by and large, stayed away from San Francisco since the pandemic.

Developer Oz Erickson, chairman of the Emerald Fund, said even the less ambitious legislation would "have a very

serious implication for the future of construction in San Francisco." He said the lack of analysis of the economic ramifications was troubling.

"How are we supposed to get capital to come back to the city?" he said. "Basically it sets a terrible precedent. There was no analysis of the consequences, no due diligence whatsoever."

Peskin pushed back at that idea, saying it presented voters with a false choice put forward by the real estate lobby.

"Protecting tenants from eviction is pro-housing policy," he said in a statement.

City Hall sources said the more sweeping version of the legislation didn't have enough support to pass, hence the less ambitious bill.

Prop 33 has been a divisive issue among city supervisors, and Tuesday's board meeting showed just how tense it has become.

Supervisors Myrna Melgar, Matt Dorsey and Rafael Mandelman ultimately supported the legislation but previously cautioned that it could harm the housing market.

Thirty years after Costa-Hawkins was passed, approximately 40% of San Francisco renters are not covered by San Francisco's rent stabilization ordinance, including rents capped to inflation.

A wide range of tenant-advocacy organizations, affordable-housing developers and labor unions supported the legislation, which needs a second vote and will then be sent to the mayor's desk.

With less than a month before Election Day, the political tensions of the mayoral race were evident. Peskin, who is running for mayor, had a testy exchange with Supervisor Ahsha Safaí, who is also running. Safaí had proposed to delay the vote to appoint an advisory committee to study the impacts.

"To say we are rushing this is amusing — you either support rent control or you don't," said Peskin. "Let's let the residents know where we are headed and to come up with a process if Prop 33 passes."

Tiffany Van Buren, BPOA Deputy Director

Maximizing Your 2025 AGA Rent Increase: Balancing Compliance & Market Realities

Berkeley property owners are facing tough choices in 2025. The Rent Stabilization Board has set the Annual General Adjustment (AGA) at 2.1% — a figure that hardly reflects the rising cost of goods and services in the city. For many rental housing providers, particularly those with long-term tenants (sometimes referred to as “legacy tenancies”), this minimal increase poses significant challenges in maintaining properties and covering rising expenses.

However, the current market softening also means property owners need to weigh whether implementing the AGA will push newer tenancies out of the market range. Here’s what you might consider when deciding whether to adopt or bank the 2025 AGA.

The 2025 AGA: What It Means for Berkeley Landlords

The 2.1% AGA may seem modest, especially given the increasing costs property owners face. Many rental housing providers rely on the AGA to help cover essential expenses like property maintenance, utilities, and taxes. Unfortunately, this year’s adjustment leaves little room for managing rising operational costs, putting further strain on rental housing providers already contending with strict regulations.

For **legacy tenancies** — those where tenants have lived in the unit for 20 or more years — the AGA is one of the few ways to modestly increase rent. But even then, the small adjustment may not keep pace with the true cost of maintaining older buildings, which often need more repairs and upgrades over time.

Weighing the Decision to Implement the AGA

While the AGA can help boost your rental income, it’s essential to think about the broader market context. If your unit has a newer tenant or is in a neighborhood with softening rental demand, raising the rent by 2.1% could potentially push your rental rate above the current market value. This could make it harder to retain tenants or find new ones if vacancies arise.

Before deciding whether to apply the AGA, ask yourself:

- Is my current rent already close to or above market value?
- Will my tenants be able to afford this increase without seeking cheaper options elsewhere?

- Can I absorb the costs of not applying the AGA, knowing that it may help retain tenants in a soft market?

Implementing the AGA: Compliance First

If you decide to move forward with the AGA increase, here are the key steps to ensure compliance:

- **Serve proper notice:** A minimum of 30 days’ written notice is required to inform tenants of the rent increase. Make sure to include all the required details, including the AGA percentage, and follow Berkeley Rent Board guidelines.
- **Check eligibility:** Ensure that your unit is covered by Berkeley’s rent control and is registered with the Rent Board. Remember, partially covered units, like most single-family homes and condos, new construction units built after June 1980, and Section 8 tenancies are not rent controlled under Berkeley rental law.

Banking the AGA: A Flexible Option for Property Owners

One aspect of the AGA that many landlords may not realize is that you don’t need to implement the increase immediately. The Berkeley Rent Board automatically adjusts the rent ceiling to reflect the AGA, meaning that you can choose to “bank” the increase and apply it at a later date. This can be a helpful strategy, particularly in a soft rental market where raising rent immediately may not be advisable.

By banking the AGA, you retain the ability to raise the rent up to the legal ceiling in the future — whenever it makes sense for your property and tenant situation. You’ll still need to serve proper notice when you decide to apply the banked increase, but this option gives you more flexibility in managing your rent levels over time.

Here are two key points about banking the AGA:

- **The rent ceiling automatically adjusts:** Whether or not you implement the AGA now, the Rent Board will update the legal maximum rent (“Apparent Lawful Rent Ceiling”) for your unit on the Berkeley Rent Registry.
- **Serve notice later:** You can choose to raise the rent to the legal ceiling at a later time by serving the appropriate notice, giving you flexibility in how you manage rent increases based on market conditions.

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The Corporate Transparency Act and Its Effect on Rental Housing Providers

Daniel Bornstein

The Corporate Transparency Act (CTA) aims to make it harder for criminals to use business entities to move money and use it nefariously. No matter how squeaky-clean landlords and real estate professionals are, we have to comply.

If we haven't filed a Beneficial Ownership Report (BOI), we need to get it done now before we incur the wrath of the federal government. For businesses created or registered before January 1, 2024, the BOI report must be filed by January 1, 2025.

For those of us planning on starting a company in 2024, the report must be filed within 30 days of receiving an actual or public notice that the company has been officially created and registered.

What is the intent of the law?

The federal law passed in 2021 makes it harder for criminals to commit tax fraud, launder money, buy assets anonymously, and finance illicit activities.

Essentially, the government wants to know how money is moving around and where it is going. Is the entity engaging in corruption, tax fraud, or funding a terrorist organization, for example? Big Brother is watching.

Who is impacted by the law?

Specifically, CTA requires businesses to register any "beneficial owner" of a Limited Liability Company (LLC), C-Corporation, or S-Corporation if they employ fewer than 20 employees or receive under \$5 million in cash receipts. Larger businesses already subject to substantial regulations are exempt. Other exemptions apply, but let's not get lost in the weeds.

It's been estimated that the Treasury Department's Financial Crimes Enforcement Network (FinCEN) will have a broad reach impacting over 32 million entities, including smaller operations like landlords who may not know the deadline is coming.

Sounds scary, right? The "Financial Crimes Enforcement Network" of the feds. It is scary and trust us, business owners do not want to cross their paths. We know that there is a vast number of housing providers who have businesses in LLCs and other ownership structures, so the landlord and real estate community need to get on top of this.

You might ask who is a "beneficial owner?"

This is anyone who exerts substantial control over the reporting company or owns or controls a 25% ownership

stake in the company. Let's say there are four owners of the company, each owning a 25% share. All four owners' information must be reported.

What are the penalties for not complying?

Failure to file a BOI report can result in fines of \$500 per day, which can add up pretty quickly. If there is any good news, fines are capped at \$10K but we don't want to reach that ceiling. Offenders can also face criminal penalties and imprisonment of up to two years.

How to file?

The BOI report can be filed electronically at <https://boiefiling.fincen.gov>

Daniel Bornstein has been practicing law for the better part of three decades and is one of the foremost authorities in managing rental relationships, handling landlord-tenant disputes, and representing clients in complex real estate litigation throughout the San Francisco Bay Area. He can be reached at daniel@bornstein.law.

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Nuts & Bolts

Banking the AGA can be a smart option for rental housing providers who want to maintain tenant goodwill during challenging times while preserving their right to raise the rent when the market improves.

Final Thoughts: Navigating the AGA in a Complex Market

The 2025 AGA of 2.1% presents a tough decision for many Berkeley housing providers. While applying the AGA may provide some financial relief, it's important to weigh the impact on both your bottom line and your tenant retention strategy — especially in a soft market.

For legacy tenancies, the AGA may be one of the few opportunities to increase rent; but for newer tenancies, rental housing providers must carefully weigh whether utilizing the AGA is worth the potential risk of losing tenants who could find more affordable options when their lease ends. As always, the Berkeley Property Owners Association (BPOA) is here to help you navigate these decisions.

We offer guidance on compliance and effective strategies for managing your rental properties in these challenging times.



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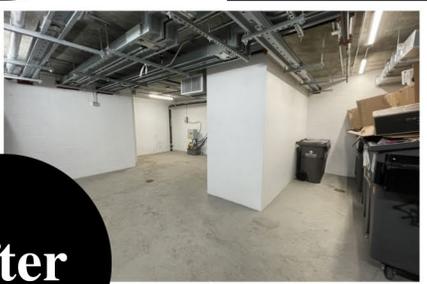


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they are received and when a suitable candidate is found, the search is over. The first tenant that survives the application process must be offered tenancy by the housing provider.

Some industry insiders already recommend this as a best practice to avoid claims of housing discrimination. But how does the tenant know the established criteria? The law requires that the screening criteria must be furnished to the prospective tenant in writing at the time of the application. And the only way to avoid these requirements? Don't charge a tenant screening fee. By charging a screening free, housing providers are "self-selecting" into this new regulatory regime. If no tenant screening fee is charged, the new rules do not apply. It may be better to get a bigger pool of applicants for a rental unit, narrow them down to a handful of stellar candidates, and run screening reports on them without attempting to pass the cost onto those prospective tenants. You may have to start chalking up screening fees as a cost of doing business.

The Berkeley Rental Housing Coalition is the political and legal arm of the BPOA. We fight against unbalanced, unfair, and poorly thought-out rental housing policy. To support this work, please consider upgrading your membership. The BHRC employs the feet-on-the-ground who hold the elected officials' feet to the fire. To lend your support, contact Executive Director Krista Gulbransen, krista@bpoa.org or (510) 304-3575.



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UC Berkeley Unveils Ambitious Plans for Largest Student Dormitory Yet

Aidin Vaziri, *San Francisco Chronicle*, October 25, 2024

UC Berkeley is set to transform its student housing landscape with the proposed Bancroft-Fulton Student Housing project, a 23-story tower southwest of campus meant to address an urgent need for on-campus accommodations.

Renderings for the dormitory were revealed this week, showcasing a design that will replace a two-story commercial building and parking lot at 2200 Bancroft Way with up to 1,634 beds, primarily for first- and second-year undergraduates.

Designed by the Philadelphia-based firm KieranTimberlake, the project features a contemporary look with minimalist white and gray panels and large floor-to-ceiling windows.

UC Berkeley has released renderings from KieranTimberlake for the proposed Bancroft-Fulton Student Housing project, a 23-story tower southwest of campus meant to address an urgent need for more on-campus accommodations.

If approved, the L-shaped building will encompass approximately 340,000 square feet on the southeast corner of Bancroft Way and Fulton Street, with a three-story atrium and 12-story extension facing Durant Avenue. It will offer a range of amenities, including a 500-seat dining facility, social lounges, laundry rooms and a fitness center, all set within a central courtyard and additional bike storage.

The university plans to present the final designs and budget to the UC Board of Regents in early 2025. Construction costs are estimated between \$425 million and \$465 million.

The Regents approved \$7 million in pre-development funding last year, paving the way for initial site surveys and design work. If approved, construction could begin as early as October 2025 and is expected to last until July 2028. The building is expected to achieve LEED Gold certification for sustainability.

The need for more housing at UC Berkeley is highlighted by its current bed-to-student ratio, the lowest in the University of California system at just 21-per-100.

UC Berkeley's student enrollment has grown faster than housing can be built, leading to increased competition for available accommodations and forcing many students to share rooms to save costs.

Since 2018, Berkeley has added more than 2,400 beds, but a significant gap remains. University officials aim to provide housing for incoming freshmen and graduate students, targeting more than 9,000 new beds in the coming years.

The Bancroft-Fulton Student Housing would be the largest dormitory on campus, far exceeding the recently completed Helen Diller Anchor House, which has 775 beds.

In April, the Chronicle reported that UC Berkeley had 14 student housing projects in the pipeline. However, seven of these projects, which would add at least 3,500 beds, face legal restrictions and other challenges. That includes a proposed structure at the historic People's Park.

Six projects are progressing, with four already completed: Blackwell Hall, which offers 775 beds just a block from campus; the Intersection Apartments in Emeryville, with 105 beds; the 772-bed Anchor House for transfer students near campus; and a 761-bed building for graduate students in Albany, called *xu?yun ruwway*, a name in Chochoyeno, the language of the Ohlone people.

Two additional projects, pending approval from the Regents, would provide about 2,700 more beds.

The Bancroft-Fulton project is separate from these initiatives.



Building Community and Learning from other Property Owners

One of the best things about BPOA is that it gives you the chance to connect with (and learn from) people who understand exactly what you're going through. I can't tell you how many times I've been at an event or meeting, and heard what others were doing regarding a particular tenant issue or a confusing regulation — and how just participating in that one discussion saved me a significant amount of time and money (and potential liability).

Whether you are looking for advice, a sounding board, or just want to meet others who understand the ups and downs of property ownership in Berkeley, then attending the live events BPOA puts on is a must for you.

Political Advocacy

I know it can feel like property owners don't have much say when it comes to city decisions. There's certainly no shortage of people looking to burden you with more requirements and costs. But here's the thing: when we come together through BPOA, we can (and do) make a difference. There are many discussions, on your behalf, going on regularly with council members and other city staff regarding housing policy. And, without staff dedicating time to this, things would be much worse for you.

But numbers are also important. Advocacy works best when we stand together. Whether it's through attending City Council meetings, contributing to letter writing campaigns, or joining us in one of our lobbying initiatives, every action we take together strengthens our position. It's important that policy makers hear from property

owners and not just tenant advocates — so they can better understand the long-term consequences of their housing decisions from both sides.

Support BPOA. Get more involved. And gain the benefits.

I want to encourage you to go on the website and review what BPOA has to offer. I want you to take full advantage of these offerings. I also want to encourage you to get more involved — and to continue supporting BPOA both financially and with your time. This applies even if you think your particular issues are taken care of (for example: because you leased your single-family home property and won't need to use BPOA forms again until you need to re-rent).

The cost of an annual membership is very low compared to the cost of a single mistake.

Plus, even if you truly believe you don't need any of this (and I can't believe anyone would feel that way — I've been in this business 40 years, have managed thousands of rental units and am still learning things all the time), we need your financial support to keep this organization running and your interests protected.

So, get invested in BPOA, renew your membership when it is time, and encourage any other property owners you know to join — for their benefit and for the industry, and Berkeley, as a whole.



Join Us for Quarterly Social Mixers with Fellow Members

<https://www.bpoa.org/events/>

DATE	TOPIC
Thursday, December 5, 3:00 PM	Webinar: Key Leasing Trends for Residential Rental Properties
Thursday, December 12, 5:30 PM	Event: BPOA & BHRC Holiday Party
Thursday, January 23, 2:00 PM	Event: On-Site Owner Discussion Group

Missed a webinar? Members can visit our On-Demand Library to watch playback recordings of past webinars, available one week after the live stream. Please note that some recordings are available for a limited time of just two weeks, so be sure to catch them before they expire!

Renting to Cigarette Smokers

Mark Tarses: Landlording with Mark

The apartment vacancy rate in Berkeley is high and rents are weak right now, and given all the new construction around town, they may get weaker. Whenever that happens anywhere, landlords start thinking about relaxing their rules for qualifying new tenants. Landlords who used to prohibit pets are now putting ‘pet friendly’ in their ads. But what about smokers? About 12% of Americans still smoke cigarettes, and it can be hard for them to find apartments where they can smoke.

I might consider some things, but I would never consider allowing smoking again. When I first started renting apartments, my leases didn’t say anything about smoking. I used to think that landlords who banned smoking were just trying to impose their personal feelings or religious views on their tenants, but an incident happened in 1985 that completely changed my opinion about this.

I had a tenant who rented a small cottage from me. He smoked a pack of cigarettes every day. There are 20 cigarettes in a pack. It’s not unusual for someone to smoke 20 cigarettes a day. I’ve known people who smoked more than that. Although this guy was a tenant of mine for many years, I don’t think he ever opened a window, at least I never saw an open window when I visited him. In 1985, he moved out. It was only after he was gone, and the cottage was empty, that I realized that this guy’s smoking was going to cost me money; a lot of money.

The Walls

First, the walls were brown. The brown color on the walls got darker as it went up the walls and onto the ceiling. That is because cigarette smoke rises. As I looked around at the walls of the cottage, I thought: “If this is what the walls look like, then what do this guy’s lungs look like?” Also, the walls were sticky. If you touched the walls, you had to wash your hands afterwards because this sticky stuff didn’t just wipe off. It was like getting maple syrup on your fingers. I had a painter scrub the walls with TSP (trisodium phosphate), but that was only partially effective in removing the cigarette smoke stains. Then the painter painted the entire cottage. Initially, it looked fine, but a few days after the paint dried, the tar and nicotine stains bled through the new paint, so I had to have the painter return and paint the cottage again, this time with wall sealer. When the wall sealer dried, the painter re-

turned and painted the apartment yet again. That meant that I had to pay a painter to wash the walls with TSP and then paint this cottage three times. As you can imagine, that cost me a lot of money. If you ever have to do a job like this yourself, I recommend ‘Kilz 2’. It’s a very effective stain sealer. It smells awful, but it really works in sealing in nicotine stains.

The Carpets

Then came the carpet. I had the carpets shampooed, but that didn’t work. The smell was unaffected by the shampooing. I had to have the carpets and the pads under them taken to the dump. Unfortunately, the cigarette tars and nicotine had gone through the carpet and the pad and into the concrete underneath. So then I had my painter return and paint the concrete slab with sealer. Then, I had new carpets and pads installed. That was another big expense.

The Cabinets

Everything in the cottage smelled of cigarette smoke. The tar permeated the oak kitchen and bathroom cabinets. I thought I was going to have to replace them, but fortunately, I found a cleaner who specialized in “tobacco smoke remediation.” The job took her a whole day. She was expensive, but whatever she did, it worked. I didn’t have to replace the cabinets. However, I did have to replace all the venetian blinds.

Naturally, while all this work was going on, I couldn’t rent this cottage. All together, I lost two month’s rent. When I added up all my expenses, the tobacco remediation cost me over a year’s rent. After this was over, I started putting ‘no smoking’ clauses in all my ads and leases. I ban smoking, not because I want to impose my morality on other people, but because smoking is just too damned expensive — for me!



San Francisco's Vacancy Tax Ruled "Unconstitutional"

In November 2022, San Francisco voters passed Proposition M, also known as Supervisor Dean Preston's "Empty Homes Tax," with 54.5% approval. This housing policy imposes a tax on vacant units, starting at \$2,500 to \$5,000 per unit in the first year and increasing to as much as \$20,000 by the third year for units left empty for over six months at a time. Following its passage, a lawsuit (Debbane vs. City & County of San Francisco) was filed against the measure. Although initially met with some legal challenges, Superior Court Judge Charles Haines ultimately allowed the case to proceed.

In early 2024, the Small Property Owners San Francisco Institute (SPOSFI), a CalRHA affiliate, joined a lawsuit seeking to overturn the Empty Homes Tax. The plaintiffs argued that the tax violated the

Takings Clause of the Constitution, rendering it unconstitutional.

On October 31, the judge heard oral arguments and initially ruled that the Empty Homes Tax constituted an unconstitutional "taking." This ruling marks a significant victory for property owners, affirming the right to use property without financial penalty. In 2022, Berkeley voters also approved a version of the Empty Homes Tax, imposing a \$6,000 tax on vacant units in the first year and \$12,000 in subsequent years.

Following this recent ruling, we expect to leverage the new case law to challenge and potentially overturn Berkeley's Empty Homes Tax. Once the court releases the official ruling, we will publish it on the BPOA website.

Election Spending on CA Rent Control Propositions Exceeds \$200 Million

Amanda Del Cid Lugo, Los Angeles Public Press, October 31, 2024

The fight for votes in the battle over rent control in California continues to prove expensive.

More than \$220 million has been funneled into California's competing ballot measures, Prop. 33 and Prop. 34, and most of that money has come from landlord interests, who have put up \$157.5 million to date in a bid to thwart efforts to strengthen rent control laws in cities across the state.

Of the ten measures on November's ballot, more than half — nearly 60 percent — of all donations this election have gone to Props. 33 and 34.

If passed, Prop. 33 would enable cities to strengthen local rent control policies by repealing a state law known as the Costa-Hawkins Rental Housing Act. Meanwhile, Prop. 34 is being called a "revenge" initiative by opponents who say it directly targets and aims to punish the organization behind Prop. 33, the Los Angeles-based AIDS Healthcare Foundation (AHF).

Prop. 33 is the third ballot measure in six years sponsored by AHF that seeks to dismantle Costa-Hawkins. In a state-

ment for the Yes on 33 campaign website, the foundation explains that it wants to expand and strengthen rent control to help keep rents affordable. It says that "without controlling rents, more people would be strangled by rent increases," and it accuses corporate real estate interests of "squeezing the lifeblood out of California."

In that six-year period, approximately than \$423 million has been poured into elections involving AHF-backed propositions, including Prop.10 in 2018, Prop. 21 in 2020, and Propositions 33 (and 34) this year. Across all the races, roughly \$130 million of that total is on the "pro" rent control side, and \$293 million is on the "anti" rent control side.



This California Proposition is Drawing the Most Campaign Spending

By *Hermia Kimelman, Calmatters, October 29, 2024*

In 2022, two dueling sports betting propositions dominated fundraising for California's ballot measures.

This year, it's two propositions related to local rent control. Of the more than \$350 million raised so far by the campaigns supporting and opposing the 10 measures on the November ballot, more than half is going to Proposition 33, which would give cities more power to impose rent limits, and Prop. 34, which targets a nonprofit that is sponsoring Prop. 33 and has put previous rent control measures on the ballot.

But this year's total is roughly only half of the nearly \$700 million that was spent on ballot measures in 2022, including more than \$571 million for and against the two competing sports gambling propositions by tribes and online gambling companies. Voters rejected both Prop. 26 and Prop. 27, overwhelmingly.

Several other potential measures that could have generated a lot of spending — including an oil industry-environmental war over oil drilling and a business-labor battle over employer liability — were negotiated off the ballot in June. And the state Supreme Court kicked off the ballot what would have been an expensive contest on a sweeping tax measure.

Rent control fight has raised millions of dollars since August

More than \$100 million has been invested in Prop. 33, the most of any of the ten statewide ballot measures,

out of a total \$350 million that has been contributed to proposition campaigns.

As Election Day on Nov. 5 nears, the money is flowing even faster. According to a CalMatters analysis, between Oct. 21 and Friday (the last day for which there is data), more than \$21 million was contributed to the campaigns contesting the 10 statewide measures. Most was contributed by the California Apartment Association, which invested \$11 million in opposing Prop. 33 and \$3.1 million to support the Prop. 34 campaign. That brings the association's total to at least \$131 million this election cycle. On the other side, the AIDS Healthcare Foundation contributed more than \$24 million since the start of October in support of Prop. 33 and against Prop. 34, though just \$560 in the last week. The foundation's donations total nearly \$65 million this election.

In fact, the Apartment Association and Healthcare Foundation are the two largest single contributors to proposition campaigns this election, accounting for more than half of all contributions related to ballot measures. The third largest contributor is the California Association of Realtors, which gave a relatively paltry \$19 million to fight Prop. 33.

In the most recent polling, Prop. 33 has the support of only 42% of likely voters, with 54% opposed, while Prop. 34 has 47% support, with 49% opposed.

from page 4

California County Fines Man \$120,000

Martinez and his family lived in the trailer on the winery property.

Excessive Fines

As he was building the ADU, Ballard also used the county's administrative process to challenge the fines he was being hit with. That resulted in his daily fines being reduced from \$1,000 a day to \$100, but no other relief was forthcoming.

He's now suing the county in federal court.

"The lawsuit is to ensure the many constitutional issues with what has happened to the Ballards are put front and center where they belong," says Paul Avelar, an attorney for the Institute for Justice, the public interest law firm representing Ballard.

Avelar doesn't contest that Ballard violated county ordinances by letting Martinez and his family live permanent-

ly in a trailer on his property. But he argues that the fines Ballard received are totally disproportional to any damage that's been done.

Ballard's complaint argues that the fines he's received violate the Eighth Amendment to the U.S. Constitution's prohibition on excessive fines. The lawsuit also argues that the county administrative process by which the fines were imposed on Ballard violates his rights to due process and a trial by jury.

"The trailer wasn't harming anyone and the Ballards were only acting out of good intentions," says Avelar. "This \$120,000 fine is the result of really just one violation. It's only by treating every day as a new violation that you get to this ridiculous number."

Aging sucks, except of course that it beats the alternative.

It's paradoxical that the idea of living a long life appeals to everyone, but the idea of getting old doesn't appeal to anyone.

— **Andy Rooney**

The older I get, the better I used to be.

— **Lee Trevino, Professional Golfer**

The older I get, the more clearly I remember things that never happened.

— **Mark Twain**

Old age is like a plane flying through a storm. Once you are aboard there is nothing you can do about it.

— **Golda Meir**

At my age, flowers scare me.

— **George Burns**

The years between 50 and 70 are the hardest. You are always being asked to do things, and yet you are not decrepit enough to turn them down.

— **T.S. Elliot**

At age 20, we worry about what others think of us...at age 40, we don't care what they think of us...at age 60, we discover they haven't been thinking of us at all.

— **Ann Landers**

Grandchildren don't make a man feel old, it's the knowledge that he's married to a grandmother that does.

— **J. Norman Collie**

When your friends begin to flatter you on how young you look, it's a sure sign you're getting old.

— **Mark Twain**

Looking fifty is great if you're sixty.

— **Joan Rivers**

Time may be a great healer, but it's a lousy beautician.

— **Anonymous**

And...

I expected getting old to take longer.



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their cut. With revenue down, they want an even bigger cut. How about a two or three percent transfer tax?

Maybe I am overly sensitive to bureaucratic excess these days. I own rental housing but I build it too. There are over 150 housing units in the East Bay which would not exist except for my participation. I am now into my fourth year trying to get a permit to convert a church in Oakland into four townhouses. The roadblocks, contortions, twists, turns and obfuscations are such that people literally do not believe me when I tell them the story — except for other developers. They often have stories that are even more egregious. If the City of Oakland put a sign on the door that said CLOSED, it would not be any worse. Most frustrating is how this whole process resulted in no change to the project. After three years, the planning department approved the project as originally proposed with no meaningful changes. Three years for what?

In the meantime, between actual interest on a loan to purchase the church, opportunity cost of interest on out-of-pocket cash to purchase, property taxes, water bills for no water usage, insurance, etc., the holding costs are almost \$1,000 a day while Oakland flounders.

I have only tangential contact with other businesses which must deal with the bureaucracy to function, but the stories I hear are similar. The do-gooders have no idea how the world works. They propose something like Measure GG which tries to phase out gas use in Berkeley. Never mind that a local business just spent millions on new gas-driven equipment upon which their business — and their employees' jobs — depend. Never mind that it could put Berkeley Rep out of business.

The best ad in this year's election is one from Daniel Lurie who in running for mayor of San Francisco. He directly challenges the in-place power structure, i.e. the elected officials and the 'crats that serve them. Slightly paraphrased, his ad says: *They say they are doing the best they can; that it is the system. But they built the system and they milk the system for their benefit.*

What the left does not understand is that there has to be wealth to tap if you want to finance your version of utopia. Government does not create wealth; it usurps it. First rule of the care and feeding of the goose which lays golden eggs? Harvest the eggs; forgo the pate.

QUOTE OF THE MONTH

Why do people say "no offense" right before they are about to offend you?

— anonymous

Sorry, I can't play bridge today, I gotta take care of my mother.

Elizabeth Francis died in Houston on October 25th at the age of 115. She was the oldest living person in the United States. More amazing is that she lived with, and was cared for by her daughter, Dorothy Williams, 96. A 96-year-old with a living parent? Somehow, that is more amazing than a 115-year-old.

— ed.

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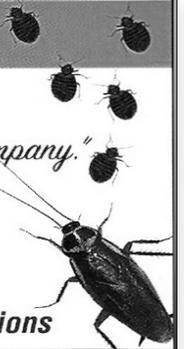
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