

AUG
2023



The Advocate for Berkeley's Rental Housing Providers

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Don't Commit a Verschlimmbesserung!

Mark Tarses, President, BPOA

There are a lot of long words in the German language, words for which there is no English equivalent. Verschlimmbesserung is one of them. A Verschlimmbesserung is an attempted improvement that makes things worse. The closest English word for it is 'disimprovement.' It is sadly common in the rental business.

I once bought a triplex in Rockridge. It was built in the 1920s in the Arts & Crafts style. Each unit had redwood doors, windows, casings, baseboards, kitchen cabinets, fireplace mantles, etc. The building was purchased in the 1980s by a woman who thought it looked 'old fashioned', so she painted all the woodwork white. She also replaced the original ceiling light fixtures with fluorescent tube lights and put security bars on all the windows. She thought this made the units look 'modern'. I bought the property from her about a year after she did all this. I estimate that her Verschlimmbesserung reduced the value of the property by around 25%.

Perhaps the most common type of Verschlimmbesserung is an improvement made for a passing fad. Here is a sad example of that. Around 1985, a landlord I knew installed trash compactors in his apartments. In the 1980s, trash compactors were at their peak of popularity. Trash compactors are relatively large appliances, so he had to remove the dishwashers in the apartments to make room for the trash compactors. Nobody wants trash compactors anymore, and trash compactors were never more valuable to tenants than dishwashers. I once had a tenant who tried to get me to put a trash compactor in her apartment. She said: "Trash compactors are amazing! They turn 20 big pounds of garbage into 20 little pounds of garbage." I was not impressed by this argument and did not buy her a trash compactor.

AUGUST EVENTS

Monthly Owners Forum

Thursday, August 17

Common Pitfalls in Rental Management

Wednesday, August 9, 3:00 PM

Fall Social Mixer

Tuesday, September 12, 5:30 PM

Save-the-date! Holiday Party

Thursday, December 14, 5:30 pm

See pages 13 & 14 for details & more events!

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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

Editorial

Will Next Year See SCOTUS Declare Rent Control Unconstitutional?

Albert Sukoff, Editor

Late in June, on two successive days, the United States Supreme Court handed down three decisions which rocked the nation. The conservative majority on the Court clearly demonstrated it has control and that it is willing to use it. Depending on one's philosophical stance, partisans on either side of the political divide were either delighted or shocked; gleeful or apoplectic; or ready to move to Texas or to Canada. This editorial is not about those cases.

One of these cases, however, may imply something of immense import to the owners of rent-controlled property. The case involved a Colorado graphic artist who designs wedding invitations. She objected to a recently-enacted law because it precluded her from refusing to take business from same-sex couples. She objected to doing this on religious grounds. She also contended that her skills as a designer of wedding invitations was self-expression akin to speech. On these grounds, she sought to have the Colorado law declared unconstitutional. She succeeded.

What is of consequence to property owners is not the substance of this case but that the Court took it at all. The plaintiff was not yet in business; there was no complaining client to whom she had refused service; and she had not been sanctioned by the State of Colorado for violation of the law to which she objected. This is the kind of case which the Court routinely rejects because the issue is not ripe for review. Granting her standing in this case was a gift. It is hard to believe anything other than that the conservative majority on the Court wanted this case. If so, this is likely a change in the way the Court does business. The Justices have not been known for embracing controversial issues when they have the option to punt.

In the June issue of your BPOA newsletter, we reprinted an article about a pair of New York cases which have been submitted to the Supreme Court for review next year. The cases are *Community Housing Improvement Program, et al. v City of New York* and *74 Pinehurst LLC, et al., v. New York*.

Accepting the Colorado case lends credence that the Court will grant cert to, and hear, these New York cases. Before joining the Court, Chief Justice Roberts was counsel for the property owners in one of the landmark takings cases involving real estate. Justice Thomas has a habit of suggesting reconsideration of precedent in written opinions. In his opinions over the last five years, he has twice done so with respect to the takings clause. Justice Alito has a similar temperament to Thomas and would likely lean the same way. It is probably a good bet that the three Trump appointees would also go along. The votes of only four Justices are required to grant certiorari. Based on recent behavior, it is a good bet that the Court will likely take this case, and, *if this Court takes this case, the constitutionality of rent control may well be toast!*

How strong is the case? The New York rent control laws are being challenged on three grounds:

- Rent control is a *per se physical taking* based on the recent decision in *Cedar Point Nursery v. Hassid*. In this case, the Supreme Court held that a Califor-

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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.**

We've made it through the majority of the legislative calendar for 2023. Berkeley City Council is about to go on an extended "summer break" before they return mid-September to push through the last of the legislation for the year.

Things have been relatively quiet on the rental housing legislative front as the Council continues to battle a mounting budget deficit as a result of the shift in the economy. As the Eviction Moratorium ends on August 31, we anticipate an increase in legislative proposals controlling the use of rental housing. The last four months of year are likely to include attempts by elected officials to posture on issues of political importance. It is anticipated that approximately three-quarters of the Council will be running for some higher office. This includes the mayor's attempt to replace Senator Nancy Skinner in Sacramento, as well as Councilmembers Kate Harrison, Rigel Robinson and Sophie Hahn vying for the Berkeley Mayoral seat.

Vacancy Tax

Our office has received a number of calls from members who are confused (and concerned!) about the impending Vacancy Tax which was passed by the voters in 2022. The vacancy tax will take effect starting January 1, 2024, and use of the unit during that tax year will impact whether an owner is subject to the tax or not. The legislative language defines the term "vacant" to mean, "...unoccupied, uninhabited, or unused, for more than 182 days, whether consecutive or nonconsecutive, in a calendar year." Those subject to the tax will be at a cost of \$3,000 per unit, per year on a vacant condo, duplex, single family home, or townhouse and \$6,000 per year for all other units. For the second consecutive calendar year in which a unit is vacant, the tax will double to \$6,000 and \$12,000 respectively.

Exemptions from the tax are only for owners of a single property of four or fewer units in which the owner of record resides in one of the units, or your personal home. Additionally, owners may qualify for a "Vacancy Exclusion Period" if the owner or unit meet any of the following conditions:

- A Building Permit has been issued for repair, rehabilitation, or construction of the unit. This is a two-year exclusion.

- A disaster has occurred (such as a fire) in the unit or has affected the unit. This is a two-year exclusion.
- Owner death, but only for the unit that was owner-occupied. This is a two-year exclusion.
- Owner "in-care" period in which the owner is in a medical care or treatment facility.

The intention of the legislation is to "incentivize" owners to bring vacant units to the market. For some, a financial punishment may not be enough to subject their business to the overzealous and damaging Berkeley regulations, but elected officials are betting you cave.

*This information was brought to you by me — the Executive Director of the Berkeley Rental Housing Coalition. The only way this information will keep coming to you is when you lend your support to the BRHC. **Please consider joining the BRHC where your BPOA membership is automatically included.** If you are interested in lending your support so we may continue as a strong organization, please contact Krista Gulbransen, Executive Director at 510-304-3575 or krista@bpoa.org.*

Affordable Housing Production Shortfall

Excerpted from Berkeleyside.org, Nico Savidge, July 25, 2023

Berkeley exceeded its state mandate for housing production from 2015 to 2022, approving permits for 4,631 homes over that eight-year period compared with a target of 2,959.

But while state mandates call for cities to approve homes at a mix of income levels, the overwhelming majority of the housing approved in Berkeley was for wealthy renters — those making over 120% of area median income, which now stands at about \$100,000 per year.

The city approved permits for 691 homes between 2015 and 2022 that were affordable to renters who are considered moderate-, low- or very-low income, representing just 15% of new approvals and less than half of the state target for affordable housing. Berkeley is far from alone in this trend, as cities such as Oakland also fell well short of their affordable housing goals.

Berkeley Staffing Crisis: About One in Five City Positions Unstaffed

Alex N. Gecan, *Berkeleyside*, July 05, 2023

Berkeley staffing crisis slows services, burns out workers, audit finds

Approximately 19% of city positions were vacant as of October 2022, according to a June report from the Berkeley City Auditor's office. The city can't offer as many services, employees are burning out and HR can't keep up with turnover.

The report found that Berkeley has been hemorrhaging employees faster than it can attract new ones, creating a vicious cycle of ever-worsening morale and workloads, driving more and more people out of city employment and hampering city services.

The city also had no proper way of tracking employees' needs or data that would help them address staff shortages, and put ever-increasing pressure on a Human Resources Department that was itself understaffed.

"Berkeley's staff shortages constrained city services, but the city did not have a clear strategy to improve retention during our audit period," the first finding reads. "More employees left the city than were hired in each year of the audit period." The report spanned five fiscal years, from 2018 to 2022.

The staffing vacuum and rapid turnover mean city agencies also lose institutional knowledge and experience in some city processes, according to the audit.

With fewer workers on the city rolls, city services have declined, including at clinics and senior centers, according to the audit. Some fire stations were forced to close temporarily.

The police and fire departments have been forced to invoke mandatory overtime. Strapped for patrol officers, the police department consolidated its patrol beats earlier this year, cutting them from 16 to 14.

Police overtime, a side effect of the department's understaffing, was the subject of an audit last year, with Wong's team concluding overtime had been a leading cause in the department blowing past its general fund budget four of the five years before that audit was filed.

"According to the city manager, vacancies in the Transportation Division have also contributed to delays in a major transportation project," according to the audit. "Such delays may limit the city's ability to achieve goals such as reducing greenhouse gas emissions or improving traffic safety."

Also tied to greenhouse gas emissions, although not exclusively, the auditors recommended the city develop a "comprehensive telework policy."

Besides cutting down on pollution, the auditors concluded that telework "increased employee wellbeing and overall satisfaction" when employees were able to work from home during the pandemic years.

"Telework can improve the recruitment pipeline by increasing the pool of applicants to city positions," as well as saving the city money on maintaining brick-and-mortar offices, the auditors wrote.

Employees in the City Attorney's Office and Human Resources Department appear to last the shortest, with respective average tenures of 2.5 and 3.1 years, according to the audit. Police department employees, by comparison, had been on the job an average of 12.5 years as of October.

The Human Resources Department had the highest vacancy rate — 45% — of any city department at the end of the audit period. The City Attorney's Office came in second with 35% and the finance office third with 30%.

On top of the human resources' vacancy rate, the department's budgeted positions, filled or not, "did not keep pace with increases in budgeted positions citywide," meaning even heavier workloads on employees, according to the audit. And four different directors were in charge at different times during the audit period.

There was a corresponding three-month jump, from 4.9 to 7.7 months, in the average time it took to fill positions between 2018 and 2022.

While the city had set goals to attract and retain employees, it did not appear to have an actual strategy for it, according to the audit.

On top of being assigned too much work for insufficient pay and with too little training, city employees also "receive new work beyond their regular duties, including referrals from City Council or public commissions," according to the audit.

Fewer than half of city workers reported that they had manageable workloads or were satisfied with their opportunities for career advancement.

The auditors recommended that the council "consider staff capacity when introducing new legislation, and limit or prioritize new legislation during periods of short staffing," and that "the city manager's office report on the status of approved projects to City council, including information about delays caused by staff vacancies." They

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Study: San Francisco Rent Control Expansion Led to More Evictions

Christian Britschgi, Reason Magazine, July 6, 2023

A new study from Northwestern University found that landlords were incentivized by rising rents to replace existing tenants with new market-rate-paying tenants

More moderate supporters of rent control will often argue that while the policy does constrain housing supply, it is nevertheless an effective means of keeping long-time tenants in their homes. The trick for policy makers is to balance these two goods of supply and stability.

But new research suggests that rent control might be a poor means of providing tenant stability as well.

A paper published last month by Northwestern University's Eilidh Geddes and Nicole Holz found that the 1995 expansion of San Francisco's rent control law led to an increase in both evictions and complaints about wrongful evictions being filed with the city's rent board.

"We found that eviction notices filed with the rent board increased by 83 percent and that the number of wrongful eviction claims increased by 125 percent in zip codes with the average level of new exposure to rent control," write the researchers.

San Francisco's original 1979 rent control ordinance limits rent increases at buildings with five or more units occupied that year or before to 60 percent of inflation. In 1994, San Francisco voters passed a referendum that expanded those controls to 1979 buildings of one to four units. The law went into effect the next year.

The city's sudden expansion of rent control has proven a fruitful development for researchers.

A landmark 2019 study from Stanford researchers found that after the expansion, tenants in pre-1980 buildings were less likely to have moved than tenants in non-rent-controlled buildings. The same study also found that the supply of rental housing fell by 15 percent as landlords converted their buildings to condominiums or otherwise withdrew them from the rental market.

That lends credence to the idea that rent control provides a mix of stability for incumbent tenants and less availability and higher prices for new entrants in the rental housing market.

San Francisco's rent control ordinance allows landlords to reset rents to market rates for a new tenant, a policy known as vacancy decontrol. The Stanford study found that this gave landlords an incentive to get rid of rent-controlled tenants when rents started to rise quickly.

"Individuals in areas with quickly rising house prices and

with few years at their 1994 address are less likely to remain at their current address, consistent with the idea that landlords try to remove tenants when the reward is high, through either eviction or negotiated payments," said Stanford researchers.

The Geddes and Holz study seems to confirm this result with its finding that evictions and complaints about wrongful evictions stayed relatively flat immediately after the expansion of rent control and then started to rise alongside rising market rents.

"Our results show that evictions do not increase until landlords have a financial reason to attempt to re-let, when market rents across San Francisco exceed the allowed increase in rental prices," they write.

This would also mean that rent control affords tenants the least amount of protection from rising rents when rents are actually rising.

Instead of just raising rents on a current tenant, who might be willing to absorb them, landlords are incentivized to evict them and get a new tenant paying the new market rent.

The study also reinforces the idea that even with price controls in place, market forces will heavily influence outcomes. Rent controls just make the process a lot less efficient, workable, and just for everyone involved.

Tenants are still moving as a result of rising rents. The difference is that landlords have to undertake the cost of filing and pursuing an eviction. If they're successful, a tenant is forced to move *and* gets an eviction on their record.

Rent control supporters typically argue that these aren't problems with rent control, they're problems with loopholes to rent control. They can therefore be fixed by eliminating vacancy decontrol, restricting condo conversions, and stepping up enforcement activities against illegal evictions.

New York's 2019 changes to its rent stabilization law that covers close to 1 million apartments in New York City were guided by these principles. It eliminated various means by which landlords could remove their units from rent control, reset rents to market rates, and pass on the costs of capital improvements to tenants.

Nico Savidge, *Berkeleyside*, July 14, 2023

The descendants of Berkeley families whose homes were cleared to make way for BART, as well as those who lived in redlined neighborhoods or lost their homes to foreclosure, will be at the front of the line for affordable housing under a policy adopted by the City Council this week.

City officials say the new policy is meant to stem the tide of displacement from Berkeley, which has lost about two-thirds of its Black population over the past half-century amid soaring housing costs, and to provide opportunities for residents who have moved elsewhere to return.

The policy, which was approved by the City Council on Tuesday, does not explicitly make Black renters a higher priority for affordable housing. But supporters described it as a step to address housing policies and practices — from overt discrimination in the 20th century to foreclosures during the Great Recession to evictions and gentrification in more recent years — that have disproportionately pushed Black residents out of Berkeley.

In 1970, the city's 27,421 Black residents made up about a quarter of its population; by 2020, there were fewer than 10,000 Black Berkeleyans, who accounted for 8% of the population.

"Our country and more particularly our city carry deep legacies of redlining, eminent domain seizures and predatory lending that have inflicted harm upon the Black community here; this includes many African Americans being displaced due to the inability to afford skyrocketing rents," Jasmine Sozi, a project manager with the East Bay Community Law Center, told the City Council at Tuesday's meeting. "The preference policy plays a crucial role in advancing racial equity in Berkeley, as it directly confronts the historical injustices experienced by the Black community and communities of color."

The law center was one of several organizations that worked on a multi-year effort to develop the policy, along with Berkeley's Department of Health, Housing and Community Services, the nonprofit Healthy Black Families and the Housing Advisory Commission.

The policy will shape who lives in "below market-rate" units in new apartment buildings and affordable developments funded by the city's Housing Trust Fund, such as those at the North Berkeley and Ashby BART stations. Waitlists for those and other affordable housing opportunities can stretch on for years.

Applicants whose families were displaced by BART construction — which involved clearing several city blocks to

build stations, parking lots and the system's right of way — are considered the "top priority" for housing under the policy. City staff wrote that families who had to sell their homes to BART in the 1960s and 70s, or whose properties were claimed by eminent domain, were deprived of an opportunity to build inter-generational wealth over the ensuing decades.

From there, the policy prioritizes:

- Those who lost a home in Berkeley to foreclosure since 2005.
- Renters who lost a home in Berkeley because of a "no-fault" eviction, or who were evicted for failing to pay rent, within the past seven years.
- Families with children under 17.
- Unhoused residents who are not eligible for permanent supportive housing, or residents who have a current or former address in Berkeley and are at risk of becoming homeless.
- Current and former residents, as well as descendants of residents, of South and West Berkeley neighborhoods that were once deemed "hazardous" by federal housing officials in the practice known as redlining. Gentrification in those areas has driven dramatic increases in housing costs, and steep declines in their share of Black residents.

Renters will list those priorities when they apply for affordable housing, and must provide documentation to support their eligibility.

City officials said they plan to contract with a community organization to get the word out about the new policy to current and former residents, and will report back to the City Council each year on its effectiveness. The prioritization system will apply to a proportion of affordable units,

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Landlords Want the Supreme Court to Kill Rent Stabilization

Kim Velsey, *Curbed*, May 9, 2023

Landlords are petitioning the Supreme Court to hear a case challenging New York's rent-stabilization laws. The development is not unexpected — in February, the Second Circuit Court of Appeals upheld New York's rent laws after landlords, led by the Community Housing Improvement Program and the Rent Stabilization Association, sued the city and the state. A spokesperson for CHIP and RSA told Gothamist the landlords “always expected” the case would ultimately be decided by the Supreme Court. Now, they're shooting their shot.

The case started almost four years ago, in July 2019, after the state strengthened tenant protections through a slate of legislation that made it difficult for landlords to raise rents above the annual increases approved by the Rent Guidelines Board, eliminated vacancy and renovation bonuses, and reduced how much landlords could raise tenants' rents to pay for Major Capital Improvements. RSA and CHIP promptly sued the city and the state, claiming that the laws violated the Constitution's “takings clause” by forcing them to cap prices and limiting their ability to evict tenants. They lost first in the Eastern District Court in 2020 and then again this winter in the Second Circuit. After hearing arguments in this case, the Second Circuit wrote, “The case law is exceptionally clear that legisla-

tures enjoy broad authority to regulate land use without running afoul of the Fifth Amendment's bar on physical takings.”

But the plaintiffs are hoping that the Supreme Court, now stacked with conservatives, may be more amenable to their argument. The landlords are also optimistic because of the Supreme Court's recent *Cedar Point Nursery v. Hassid* decision, which reversed a state regulation that allowed union workers to recruit on private farms. Landlords have argued that rent stabilization represents a far greater taking as tenants are guaranteed lease renewals, with occupancy rights passing on to family members.

“Absent unlawful acts, tenants and their broadly-defined ‘successors’ are entitled to lease renewals in perpetuity,” the landlords write in their petition to SCOTUS. Whether or not this seems plainly descriptive or ominous is a question for the reader.



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Tiffany Van Buren, BPOA Deputy Director

Roommate Changes in Rent-Controlled Properties

If you rent to students, at some point, you've likely had to deal with roommate changes or the last-minute addition of a roommate to the lease. It's stressful business, both for the property owner and the resident. Maybe the Original Tenants can't agree on signing a lease extension together; one wants to stay, the other wants to move, so they're in a position where they have to seek a replacement roommate. Or maybe two people signed a lease for a two-bedroom apartment, then, a week before or after moving in—surprise! A third potential roommate enters the picture. No matter the scenario, there are procedures and best practices for dealing with and documenting roommate changes. I could and should do an entire webinar on this topic, but here is some general information to get started.

Here are some tips for you, the rental housing provider:

- Don't help your Original Tenant(s) advertise for a roommate. That's their responsibility, and they have much more freedom with what they can say in their ads.
- Require a prospective replacement roommate, who will become a subtenant, to submit a rental application and meet your screening criteria. Failure to meet the same criteria you use to qualify all applicants is considered a reasonable objection to a proposed subtenant.
- Inform your Original Tenant(s) that, per Berkeley's Rent Stabilization Ordinance, they cannot generate income from the rent. The total rent paid by all roommates cannot exceed the rent ceiling. An incoming roommate should pay the same amount of rent and prorated portion of utilities as the person they're replacing.

Unless you are within the first thirty days of the original lease period, you do not add the new roommate to the lease. I repeat, do not add a new roommate to the lease if a) you have a rent-controlled property, b) at least one Original Tenant (someone who is named in the original lease) is still in residency, and c) this change in roommates occurs on the 31st day of the lease or after. So — what, you may be asking, do I use? Read on.

Berkeley is one of the last, if not the last, municipalities in the state of California that recognizes Original Tenants. Under Berkeley Rent Board Regulation 1013 and

California Civil Code 1954.53, rental housing providers reserve the right to set a new lease when there has been a vacancy event, meaning that there has been a complete turnover of all Original Tenants and only subtenants — people who are not named in the lease — are remaining. Not only can you set a new lease, wherein the subtenants would become Original Tenants, but the rent under the new lease can also be set to market rate. Boom — there's your leverage. Sometimes, the pending increased rent results in the property being returned vacant; other times, you get a new, market-rate lease, and everyone is happy.

I almost forgot the documents! Visit the Rental Housing Forms under the Content Library tab and select The **Add/Remove Tenant to Lease Agreement** form to memorialize the tenant who is departing from the lease, and the **Replacement Roommate (Costa-Hawkins)** form, which, though it has a funny title, makes clear the Replacement Roommate/Subtenant is not an Original Tenant, and is not entitled to inherit the rent-controlled rent once the last Original Tenant vacates the property.

Would you appreciate a webinar on this topic? Drop me an email at Tiffany@bpoa.org to let me know!

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Study Results

The financial returns from operating rent-stabilized units have fallen dramatically as a result, leading landlords to claim their buildings are being “defunded.” There's some evidence that unit quality is falling and vacancies are increasing, as owners have fewer funds and less incentive to maintain occupied units and renovate empty ones.

The fact is market prices tell you something real about the costs of operating buildings and the opportunity costs of capital needed to do it.

If regulations attempt to squeeze market prices out of the system, producers will find less efficient workarounds for charging those market prices anyway. If regulations are successful at shutting down those workarounds, fungible capital will move on to other parts of the economy where market returns can still be made.



A Rent Control Renaissance is Underway in the US

Jack Elbaum, Fee.Org, May 25, 2023

And it's sure to make the housing shortage worse

If one needed any more proof that rent control laws suppress investment in new housing, then it is not necessary to look any further than this recent survey from the National Apartment Association. They found that “Over 70% of housing providers say rent control impacts their investment and development plans; actions include reducing investments, shifting plans to other markets, and canceling plans altogether.”

This is significant for two reasons.

The first is that there is something of a rent control renaissance happening right now across the country. There are major cities — and even whole states such as New York and Colorado — that are currently considering implementing rent control.

The second is that there is a national housing shortage. All recent studies agree on this, but there are various estimates as to how severe it is. *The Wall Street Journal* suggests that the gap between the current number of housing units and how many we need is somewhere between 7.3 million and 1.3 million.

Considering the revival of rent control advocacy and legislation — and the legitimate problems housing shortages create in the form of high prices — it seems warranted to consider the *actual* effects that rent control may have on housing markets.

Rent Control, Considered In Theory

The instinct to look for a solution to high housing prices and a housing shortage is certainly understandable. It is the job of politicians to assess the conditions in their jurisdiction and craft policy accordingly. The issue in his case, however, is that rent control exacerbates the exact problem it attempts to solve: namely, high housing prices.

The reason it makes the problem worse is that it skews the incentives associated with housing such that there is little to no motivation to build more of it. Under rent control, the city limits — and sometimes completely erases — the profitability of new housing projects by imposing a ceiling on the price a landlord can charge for rent. But the only reason one would make the decision to invest in new housing construction in the first place is if one believes it would be profitable. Most economists, including promi-

nent figures decidedly on the left, recognize that this leads to profound housing shortages.

In 2000, Paul Krugman described rent control as “among the best-understood issues in all of economics, and — among economists, anyway — one of the least controversial. In 1992 a poll of the American Economic Association found 93 percent of its members agreeing that ‘a ceiling on rents reduces the quality and quantity of housing.’”

Consequently, in non-rent-controlled units, prices skyrocket due to the constrained supply. In rent-controlled units, a small number of people receive the benefits of paying rent below the market price.

And what to make of the argument that the real reason housing prices are high is because of price gouging? While there is no formal law that would prevent a landlord from charging exorbitant prices under a free market condition, the constraint is inherent in competition.

If one charged wholly unreasonable prices, then consumers would simply decide to rent a different unit, owned by someone else, instead. This would incentivize the person who was charging prices that were too high to lower his prices — lest he be left with no tenants. The issue is that when housing supply is constrained, prices rise because 1) prices are subject to the underlying realities of supply and demand and 2) there are fewer options and therefore less competition.

This is why the housing providers mentioned in the survey above overwhelmingly said that rent control would negatively affect their investment and development plans.

Rent Control, Considered In Practice

This is not just true in theory, but in practice as well. St. Paul Minnesota is a case study in the allure — but ultimate failure — of rent control.

In November 2021, the citizens of St. Paul, Minnesota passed rent control through referendum. As is always the case with those who favor rent control, voters hoped that it would help lower housing prices in the city. Yet, data showed that in the six months after it passed, the number of building permits issued for housing decreased

*Failed attempts to
implement rent control
remind us there is really only
one way to lower housing
prices when there is a
shortage: build more housing*

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Budget Update

Last month, the Legislature passed, and the Governor signed a \$310 billion spending plan that protects core programs and covers a \$30 billion budget deficit. You may find the Governor's press release here highlighting the signing, budget trailer bills, and infrastructure package. CalRHA supported an increase in the renters' tax credit, which was successfully included in the state budget.

Governor Newsom/Attorney General Announcements on Housing Production.

The Attorney General has issued guidance for cities trying to skirt the development of more housing. In the guidance, Attorney General Bonta includes the following information:

- Written legislative findings are required to support claims that SB 9 or AB 2011's requirements could pose a threat to public health, safety, or welfare. Such findings must be made with specificity; otherwise, an "urgency zoning" ordinance is likely invalid. Laws requiring ministerial approval of housing development, such as SB 9 or AB 2011, do not by themselves constitute a current and immediate threat to public health, safety, or welfare. Generalized concerns about visual or aesthetic standards are insufficient to support an urgency ordinance.
- In addition, urgency zoning ordinances must demonstrate immediate need, meaning that local agencies face immediate threats.
- To keep an urgency zoning ordinance prohibiting multifamily housing in place beyond 45 days, local jurisdictions must identify a significant, quantifiable, direct, and unavoidable impact based on objective policies in existence at the time the ordinance is adopted. Local jurisdictions must also demonstrate that there is no feasible alternative that would mitigate or avoid the adverse impact "as well or better, with a less burdensome or restrictive effect," than the urgency ordinance.

Legislative Update — Status of Legislation at Summer Recess

The Legislature is now on their four-week summer recess until August 14th. When they return, bills will be heard in the Appropriations Committee and on the Floor. The deadline for bills to pass to the Governor is September 14th. The five weeks after they reconvene from summer

recess will be filled with activity and end of session deals. CalRHA has a number of bills that we are still actively lobbying.

Highlights of Several Legislative Bills That CalRHA Continues to Lobby

- **AB 12 (Haney) — Tenancy: Security Deposits — OPPOSE** • Would prohibit a landlord from receiving a security deposit for a rental agreement in an amount in excess of one month's rent, regardless of whether the residential property is unfurnished or furnished. There are discussions underway of exempting small landlords. The bill is on the Senate Floor.
- **AB 1317 (Carillo) — Unbundled Parking — OPPOSE** • Would require the owner of residential real property that provides parking with a residential unit to unbundle parking from the price of rent ("unbundled parking" selling or leasing parking spaces separate from the lease of the residential use). CalRHA has had productive conversations with the author's office but is still opposing. The bill is on the Senate Floor.
- **ACA 1 (Aguilar-Curry) — Voter Approval Threshold — OPPOSE** • ACA 1 lowers the voter threshold from a two-thirds supermajority to 55% majority to approve local (city, county, and special district) GO bonds and certain special taxes for affordable housing, public infrastructure, and permanent supportive housing projects, and defines those terms. ACA 1 passed the Assembly Local Government Committee in July and is pending in the Assembly Appropriations Committee.
- **ACA 10 (Haney) — Fundamental Human Right to Housing — OPPOSE** • Establishes that the state recognizes the fundamental human right to adequate housing for everyone in California. This right is a shared obligation of state and local jurisdictions to respect, protect, and fulfill this right, on a non-discriminatory and equitable basis, with a view to progressively achieve the full realization of the right, by all appropriate means, including the adoption and amendment of legislative measures, to the maximum of available resources. ACA 10 passed the Assembly Housing and Community Development Committee in June and is pending a hearing in the Assembly Appropriations Committee but has a fairly large fiscal estimate.

continued on page 11

The One-Way Rent Control Ratchet

Christian Britschgi, Reason Magazine, March 16, 2023

When California's rent-control law was working its way through the Legislature in 2019, its author, Assemblyman David Chiu (D-San Francisco), said the policy was a necessary means of stopping the state's most egregious rent hikes.

"We have millions of Californians who are one rent increase away from eviction and homelessness, folks who are struggling on the streets because they were subject to 10, 20, 100 percent rent increases," he told journalists Liam Dillon and Matt Levin on their *Gimme Shelter* podcast.

Chiu argued his "anti-rent gouging" bill — which capped rent increases at the lesser of 5 percent plus inflation or 10 percent for most housing more than 15 years old — struck "the right balance between protecting tenants from egregious rent increases while providing landlords with the ability to make a fair rate of return."

By addressing the immediate issue, Chiu said the state would have some breathing room to build the homes it needs to fix its housing emergency in the long term.

Fast forward four years, home construction rates have been basically stagnant in California, rents and home prices are up, and lawmakers are calling for tighter rent controls to fix the immediate housing crisis.

Earlier this month, state Sen. Maria Elena Durazo (D — Los Angeles) announced her intent to introduce S.B. 567,

a bill that would lower the rent caps established in Chiu's bill to inflation or 5 percent, whichever is less, according to the *Sacramento Bee*.

"We need to prevent homelessness, prevent people from being kicked out on the streets," Durazo said. "That's our goal with SB 567. This is an urgent humanitarian crisis in our communities."

The existing 10 percent cap was allegedly the thoughtful, measured means of doing this. Now it appears that 5 percent caps are now necessary to get the job done.

Rent control is making something of a comeback in the United States as housing costs mount in even once-affordable parts of the country.

Proponents argue the flaws of old-school rent control policies from mid-century or the 1970s can be designed away with smart "rent stabilization" or "anti-rent gouging" laws that have more generous rent caps, make allowances for inflation, and include rolling exemptions for recent construction.

State-level rent control policies passed in Oregon and California in 2019 were supposed to be the models of rent control done right.

Folks like Chiu argued that these laws wouldn't solve every problem, but they would address the most serious and destabilizing rent increases facing tenants.

continued on page 17

from page 10

Legislative Update

- **SB 267 (Eggman) — Credit History of Persons Receiving Government Rent Subsidies — OPPOSE**
 - Would prohibit the use of a person's credit history as part of the application process for a rental housing accommodation without offering the applicant the option of providing alternative evidence of financial responsibility and ability to pay in instances in which there is a government rent subsidy and would require that the housing provider consider that alternative evidence in lieu of the person's credit history. SB 267 is pending a hearing in the Assembly Appropriations Committee.

As always, CalRHA will keep you informed as these bills make their way through the Legislature. We will be sure to send out Calls to Action when we are at a pivotal juncture and your involvement could help determine the outcome.

The remainder of the legislative calendar for the year is as follows:

- August 14 — Legislature reconvenes from summer recess
- September 1 — Last day for fiscal committee to pass bills to the Floor
- September 8 — Last day to amend bills on the Floor
- September 14 — Last day for bills to pass the Floor in the second house
- October 14 — Last day for Governor to sign or veto bills

The California Rental Housing Association is a statewide organization representing almost 24,000 members totaling more than 653,000 units. Its purpose is to advocate in the best interest of the rental housing industry and collectively address industry needs. As a member of BPOA, you are automatically a member of CalRHA, our statewide advocacy organization.

Brianna Herlihy, Fox News, July 13, 2023

Lawsuit aims to end 50 years of rent-controlled apartments in NYC

The Supreme Court is considering a petition to hear a case that challenges New York City's rent stabilization law as pressure builds from stakeholders who say the law infringes on the rights of property owners.

New York City's Community Housing Improvement Program (CHIP) and the Rent Stabilization Association of NYC (RSA) are suing the city, having first filed a lawsuit in 2019, challenging the constitutionality of New York's Rent Stabilization Law (RSL).

The plaintiffs have argued that the RSL has had a "detrimental effect on owners and tenants alike and has been stifling New York City's housing market for more than half a century."

"New York's Rent Stabilization Law (RSL) is the nation's most stringent rental housing regulation, governing one million New York City apartments," the lawsuit states.

It argues that once a tenant's lease is up, the law prevents owners from occupying their own property, changing its use or simply leaving it vacant. Instead, the tenants are the "successors" of the property and unless they do something illegal, the tenants are entitled to lease renewals in perpetuity.

The case was dismissed by the U.S. District Court for the Eastern District of New York and again by the U.S. Court of Appeals for the Second Circuit in late 2020. But plaintiffs now hope that the Supreme Court will hear their case.

And they've entered the ring with legal heavyweights on their side.

"The breadth and depth of amicus support from across the business, real estate, and think tank community underscores the validity and urgency of our Supreme Court petition," CHIP and RSA said in a joint statement.

"We believe the Supreme Court will find that the arguments laid out in our certiorari petition, and supported by these amicus filings, are clear and convincing: New York's draconian rent control law is unconstitutional and must be invalidated. Only then can we pave the way for new, effective rental housing laws," the groups said.

Amicus briefs have been filed on behalf of the plaintiffs from the U.S. Chamber of Commerce, real estate and small property owners associations, and major think

tanks like Manhattan Institute, Cato Institute and Institute for Justice.

"People have the right to control their property. New York's law took key property rights away from property owners — for example, by allowing tenants to occupy units indefinitely and barring owners from reclaiming their units for personal use," said Tyler Badgley, senior counsel for the U.S. Chamber Litigation Center. "The Supreme Court should grant review to protect property owners from this unconstitutional overreach," he said.

The plaintiffs in the case are not seeking damages or monetary compensation but instead are asking for declaratory and injunctive relief against the future enforcement of rent stabilization.

Such relief would not only protect the constitutional rights of property owners but also compel the government to focus on policy solutions to address unaffordable housing, like increasing the housing supply and providing housing assistance to those who actually need it, the plaintiffs say.

CHIP is an association of approximately 4,000 owners and managers of more than 400,000 rent-stabilized rental properties across all five boroughs in New York City.

The RSA is the largest trade association in New York City, representing 25,000 property owners and agents responsible for approximately 1 million units of housing.

The Supreme Court has yet to decide whether to take up the case, but it could as early as this fall.

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The One-Way Rent Control Ratchet

But by not solving every problem, they've also left plenty of political will to push tougher rent control policies and made doing so a lot less of a political lift.

The allegedly fine balance Rent Control 2.0 proponents have struck between stability and supply, it turns out, isn't particularly politically stable.

If you've already won the argument that it's the government's role to prevent people from having to move because of rent increases, how high those increases can be seems almost irrelevant.

Some people will still be displaced by rising rents. Is it really any fairer that someone has to move because of a 5 percent rent increase as opposed to a 10 percent increase? People forced to move because of the lower rent increase are arguably more vulnerable and in need of protection. The argument for a stricter rent control regime makes itself.

It's a truism too that it's easier to tighten an existing policy than implement a new one. It's the difference between substituting one line of code for another versus passing a whole new policy all by itself.

Where rent control policies do exist in the U.S., the movement has been to make them more binding.

New York legislators made the longstanding rent stabilization law covering the New York City area more binding in 2019. Now, the state's progressive and socialist lawmakers are back again with a "good cause eviction" bill

that would allow tenants to challenge literally any rent increase.

Portland, Maine, voters passed rent control in 2020 and then tightened it in 2022.

The same thing happened in Santa Monica, California, where this past election voters set a new allowable rent increase of \$19 a month through the end of August 2023. Allowable rent hikes will then increase to \$70.

The intellectual rehabilitation of rent control is raising the policy from the dead in the few places that did manage to get rid of the policy. Massachusetts voters overturned local rent control laws in the 1990s. Now, Boston's current mayor wants to bring them back.

The one serious, recent counterexample of rent control laws getting looser over time is St. Paul, Minnesota. There, voters passed a 3 percent cap on rent increases, no ifs, ands, or buts. This has since been weakened by the City Council but only after new construction activity immediately plunged.

I've argued before that I think even moderate rent control policies are ill-advised on policy and ideological grounds. It's increasingly clear they're politically ill-advised as well. "Smart" rent control policies give way to less thoughtful ones quite easily.

Join Us for Quarterly Social Mixers with Fellow Members

Remember: Sam Sorokin's Owners Forum happens every month on the third Thursday!

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

DATE	TOPIC
Thursday, August 17	Monthly Owners Forum with Sam Sorokin, Premium Properties
Wednesday, August 9, 3:00 PM	Common Pitfalls in Rental Management
Tuesday, September 12, 5:30 PM	Fall Social Mixer at the Freehouse Pub
Thursday, December 14, 5:30 pm	Save-the-date! Holiday Party at the Berkeley Yacht Club

And...check out our Rental Housing Provider 101 series. Whether you're new to rental housing or just want to brush up on your skills, we'll teach you the basics of being a landlord in Berkeley. This series is available for playback in the members-only Content Library on our website.

UCB Grad Student Commutes to Class by Plane to Save on Rent

Lauren Lewis, KTLA News, June 29, 2023

A Los Angeles graduate student is going viral for how he avoided paying Bay Area rent while attending the University of California, Berkeley.

In a now-viral Reddit post, user 'greateranglia' wrote a post titled, "I survived living in LA and commuting to Cal by plane over the past academic year to save on rent."

In an interview with KTLA, the user, who wishes to only be identified by his first name, Bill, says all his professors and classmates knew he was a super commuter: "My classmates, instead of asking 'What's for dinner?' they would ask 'When's your flight back?'"

Bill's graduation photo taken at SFO, wearing a sash made from all his boarding passes.

Bill says he was living in Los Angeles with a rent he could afford when he got accepted into a one-year master of engineering program at Cal. Knowing he would return to Los Angeles after graduation, he wanted to avoid having to pay rent in the Bay Area.

Bill took commercial flights between LAX and SFO at least three times a week during the academic calendar year for classes. "My classmates thought I would quit week one, but I treated it as a trip more than a commute," Bill said.

On a typical day, he would wake up at 3:30 a.m. and head to the airport for a 6 a.m. flight from LAX to SFO. Then, he would take the 8:30 a.m. BART to get to Berkeley. Class started at 10 a.m. After a full day of classes, he would do the commute in reverse and get back home to L.A. around midnight. Bill kept an incredibly detailed log of what he spent on his super commute on Flyertalk. He spent a total of \$5,592.66 on his commute between LAX and SFO during his one-year program.

Of that, \$671.29 was spent on BART, \$520.00 on parking, \$1,948.27 on gas, \$39.96 on inflight WiFi, \$1,552.10 on Alaska flights, 407,500 Alaska miles, \$758.24 on Southwest flights, 156,945 Southwest points, \$71.30 on United flights, 5,500 United miles, \$15.60 on Avianca flights, 6,500 Avianca miles, \$15.90 on Spirit flights.

He took a total of 238 flights and flew 92,089 miles. The engineer in Bill led him to solve the number of minutes spent on his commute: 75,955.

Asked if he would do it all again, Bill answered yes, "This is probably one of the craziest things I've done in my life, and I'm so glad I made it through, without missing any classes. That itself is a miracle."

QUOTE OF THE MONTH

Good intentions will always be pleaded for every assumption of authority. It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters.

— Daniel Webster

AUGUST MEETINGS & EVENTS

Monthly Owners Forum with Sam Sorokin, Premium Properties

Thursday, August 17

Common Pitfalls in Rental Management

Wednesday, August 9, 3:00 PM

Fall Social Mixer

Freehouse Pub

Tuesday, September 12, 5:30 PM

Save-the-date! Holiday Party

Berkeley Yacht Club

Thursday, December 14, 5:30 pm

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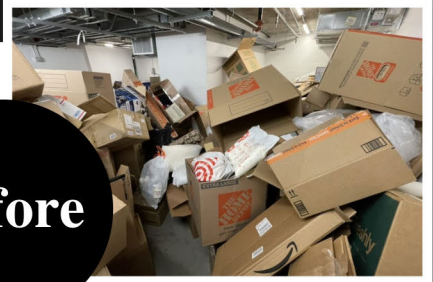
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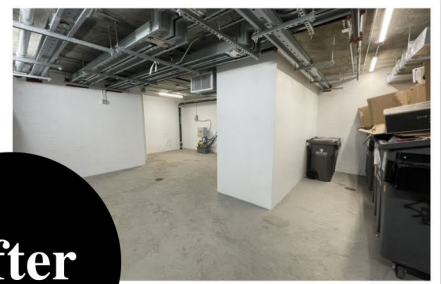
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SCAN ME

from page 2

nia labor regulation that allowed union representatives to recruit on private farmland constituted a *per se* violation of the takings clause of the Fifth Amendment. The challenged law allowed union organizers access to private property three hours a day for 120 days a year. If this is a taking, what is a law that allows the full-time occupancy of an apartment for life, and even beyond that when rights extend to ancillary occupants such as relatives, roommates, even caretakers? The petitioners in the New York case posit that, under the *Cedar Point* standard, rent control is clearly a taking.

- Over the years, numerous court decisions involving rent control have lamented that rent control creates a situation wherein one private party — at his/her expense — is compelled to provide a public good to another private party — to his/her benefit. In *Armstrong v. United States*, 364 U.S. 40, 49 (1960) the Court said: the Takings Clause ensures that the state may not “forc[e] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole”. Lamentations aside, however, no court has ever applied this observation. The contention is that public benefits are appropriately assigned to the public at large. Food stamps and housing vouchers are publicly funded benefits; controlled rents are not.

- Lastly is the contention that there is no reciprocity for the property owner under rent control. If the government takes your property, under eminent domain for example, it gets the property and you get money. If I am subject to zoning controls, I give up my right to build an abattoir next to your house but in return I too am protected because you are similarly constrained. These are reciprocal agreements. Under rent control, the tenant gets a lower rent, the community gets benefits associated with more affordable housing and the neighborhood coffee shop does more business. The property owner, however, gets nothing in return.

As expected, the Second Circuit Court in New York ruled against the petitioners in this case. (See related articles on pages 7 & 12.) Hence the appeal to the Supreme Court. The arguments in this case are compelling, but that may not be crucial. Like it or not, courts do have political leanings. This can be critical at the Supreme Court level because, unlike lower courts, the high Court is not bound by precedent — it sets precedent. The pre-Trump Court might have taken this case and ruled against the petitioners. More likely, that Court would have passed. This Court, however, will likely jump on this case like cat on a mouse.

Berkeley Staffing Crisis

from page 4

also recommended the city set up retention goals, analyze what staffing is needed for city operations and services, work to increase employee satisfaction, streamline its hiring process, modernize its recruiting process “and regularly collect data on employee satisfaction and on diversity, equity, inclusion and accessibility.”

The audit is scheduled for discussion at the City Council’s July 11 meeting. In a letter to the council, Wong recommended that City Manager Dee Williams-Ridley begin reporting biannually starting in January on how the

city has progressed in addressing the issues the auditors found.

“While recruitment and retention have always been high priorities for the City, the challenges of emerging from a pandemic, which significantly impacted the way we work, created a setting where such efforts must now be the organization’s top priority,” city spokesman Matthai Chakko wrote in an email.

Berkeley’s Lost Locals

from page 6

not all of them; a process to determine what share of homes will be distributed based on the policy is underway now.

Members of Berkeley’s Housing Advisory Commission had hoped to create a policy that would explicitly prioritize Black residents for affordable homes, but were warned that such a race-conscious system may not withstand a legal challenge unless it was backed up by data.

To that end, the commission put forward and the City Council approved a separate item Tuesday commissioning a study of how government action contributed to housing discrimination in Berkeley and its effects on Black residents. City staff wrote that the study would “document past discriminatory housing policies to support more explicitly race-based restorative housing initiatives in the future.”

by 84% — from 2,180 permits down to 352 — relative to the same period during the prior year. And although the policy had not even gone into effect six months after it had passed, producer expectations are a crucial determinant of supply.

Less than a year it was initially passed, the St. Paul City Council passed a “sweeping overhaul” to the ordinance that ensured “New construction and affordable housing will be exempted from the ordinance.” In other words, after only a few months of the policy in place, the city recognized the extent to which it would have a negative impact on housing construction and essentially removed it. To exempt new construction is to insulate the ordinance from its worst effects. This is a good thing, but it is unfortunate that St. Paul had to learn it through experience.

Beyond St. Paul, three Stanford University professors — two in the business school and one in the economics department — studied the effects of rent control in San Francisco. They found that “landlords treated by rent control reduced rental housing supply by 15%, causing a 5.1% city-wide rent increase.”

Additionally, a recent literature review on rent control found that it “shrink[s] the supply of rental units by making developers less inclined to build new housing” and that “the impact of rent control laws is greatest on the rent-controlled stock itself, as rent control incentivizes landlords to convert their rental apartment buildings to condominiums to escape the impacts of the law.” Consequently, prices go up.

On Prices, Listen To Hayek

We learn from the various failed attempts to implement rent control that there is really only one way to lower housing prices when there is a shortage: build more housing.

Aside from the real-world examples we saw, famed economist F.A. Hayek also had an explanation, and it centered on the nature of prices. He primarily sees prices as signals; they signal information to producers about what, and how much of a given product, to produce and they signal information to consumers about what, and how much of a given product, to purchase.

Implicit in this idea is that even though prices may be nominal, they are based on very real conditions. In other words, the intimate relationship between prices on one hand and supply and demand on the other is not made up. After all, if it was made up, then prices would not signal *any* information.

Thus, the only way to alter prices without significant unintended consequences, like housing construction plummeting, is by changing the underlying reality and market dynamics (ie. removing barriers to building new housing so that prices can reduce organically). To try and change prices through government fiat is to impose a wholly inauthentic set of signals onto the market.

It may be possible to reduce the top-line price in the short run; but, ultimately, there is no escaping the law of unintended consequences.



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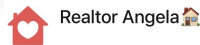
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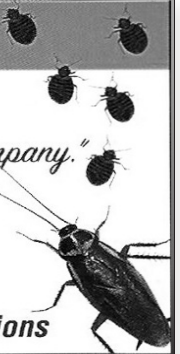
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