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## Nuisance Evictions in Berkeley

Presentation by Clifford Fried to Berkeley Property Owners Association

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### **Landlord's Right to Evict Under State Law**

A tenant is guilty of an unlawful detainer and may be evicted only when the landlord proves the tenant falls within at least one of the enumerated circumstances set forth in Code of Civ. Proc. § 1161. Those circumstances are,

- where the tenant fails to vacate after their termination as an employee, agent, or licensee (§ 1161, subd. 1);
- is in default for nonpayment of rent (§ 1161, subd. 2);
- breaches a material term of the lease (§ 1161, subd. 3);
- commits waste, **maintains or commits a nuisance upon the premises**, or uses the premises for an unlawful purpose (§ 1161, subd. 4); or
- fails to deliver possession to the landlord after having given written notice of their intention to terminate (§ 1161, subd. 5).

### **But Subject to Restrictions Under Berkeley Law [Berkeley Municipal Code 13.76.130A]**

No landlord shall be entitled to recover possession of a rental unit covered by the terms of this Chapter [Berkeley Municipal Code 13.76] unless said landlord shows the existence of one of the following grounds:

5. Destruction of Peace. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section **1161**.

### **Subdivision 4 of Code of Civ. Proc. Section 1161 says**

A tenant of real property, for a term less than life is guilty of unlawful detainer . . . (4) when any tenant or subtenant is maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the premises.

### **What Conduct is Covered by Berkeley's "Destruction of the Peace" Just Cause?**

To evict a Berkeley tenant who is destroying the peace, the landlord must either allege and prove the tenant

(1) has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises, or  
(2) is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

Prepared by Fried, Williams & Grice Conner LLP for BPOA. You may learn about us at [www.fwgc.law](http://www.fwgc.law) or call 510-625-0100 for an appointment.

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