

JUN
2023



The Advocate for Berkeley's Rental Housing Providers

Founded 1980 • Charter Member, California Rental Housing Association
2041 Bancroft Way, Suite 203, Berkeley, CA • www.bpoa.org

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Is an Office Building Crash Coming?

Mark Tarses, President, BPOA

I recently visited my lawyer at his office in a high-rise office building on Lake Merritt. When I last visited him 4 years ago, this building was fully rented. This time, I felt like I was walking through a ghost town. There was no one in the halls or the elevators. I could hear the echo of my footsteps as I walked through the halls. The building is over 80% vacant even though it is a well-maintained Class-A building and has wonderful views.

Things are also bad in San Francisco, where the city's office vacancy rate is over 30%. Some buildings are almost completely vacant. The 40-story Salesforce East building just lost their last remaining tenant. This same thing is happening in big cities all over the U.S. as people moved from office jobs to remote work at the start of Covid, and a lot of them never returned.

Over the next 5 years, over \$2 trillion in commercial real estate loans will come due, more than at any prior 5-year period in American history. When these loans come due, they will have to be refinanced and at interest rates that will be much higher than they were 3 or 4 years ago. What interest rate will lenders demand on office buildings that are 40% or 50% vacant — if they are willing to lend money at all?

Politicians in San Francisco, New York, and other cities are saying that the solution to the empty office building glut is to turn them into apartments. They talk about putting kitchens and bathrooms in office buildings as though that can be done easily, quickly, and cheaply, but we know how preposterous that is. I think a disaster is looming, and I don't see any way to avoid it.

JUNE EVENTS

Monthly Owners Forum

with Sam Sorokin, Premium Properties

Thursday, June 22, Noon

Everything You Need to Know About Fair Housing & Reasonable Accommodations

Wednesday, June 14, Noon

Credit Screening: How to Compare Data and Use Reports

Thursday, July 27, Noon

BPOA Summer Social! Thursday, June 15

See pages 13 & 14 for details & more events!

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Editorial

"You Are Under Arrest for the Crime You Are About to Commit..."

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

It will come as no surprise to you that there is much government interference in our business. Many of the rules, regulations, oversight, fees, fines and penalties to which we are subject are based on the assumption that all owners do, might, or might be tempted, to take undue advantage of tenants. These government controls start with the premise that there is an imbalance of power in the landlord/tenant relationship and that this imbalance must be redressed.

Such laws and regulations begin with the assumption that all owners lean toward an oppressive relationship with tenants. Any reasonable person would acknowledge that there are good and bad owners and good and bad tenants. Government oversight of our industry, however, is overwhelmingly based on the premise that all tenants are good, or at least innocent, and that all owners are bad, or least prone to lean in that direction.

Unfortunately, the magnitude of the attention we get from government is commonly even worse. Government rules and regulations too often not only seek to redress this alleged imbalance but rather to preclude it. Certain practices are preempted by rules and regulations which apply across the board regardless of any actual evidence of malpractice. This puts owners in the position of citizens in the movie *Magnolia*. In this film, set in a future dystopian society, the police are gifted with precognition and use this power to arrest would-be criminals *before* they offend.

And so we get rules like those which limit the tenant-selection process so as to disallow criminal background checks or to preclude any inquiry into financial capabilities. We get rules that forbid one party to a contract from ever terminating that contract. We get regulations which demand physical inspection of property without any evidence of any problem. The City of Oakland is collecting information on rent from units not subject to rent control. We get proposals like that made by Berkeley's mayor several ago to mandate that owners allow pets. Still worse was a Seattle proposal which took the tenant selection process entirely out of the hands of owners by installing a first-qualified-applicant-gets-the-unit system. This legislation started with the assumption that owners were incapable of not discriminating and therefore unqualified to select tenants in a socially equitable way.

Note the difference between punishment-after-actual-bad-behavior and preemptive usurpation of control so as to preclude any potential bad behavior. It is as if drivers could be convicted, not of speeding, but of a proclivity to speed. Were this the case, instead of an occasional deserved speeding ticket, I would have spent half my adult life in jail.

What makes all this more problematic is that the contractual relationship between owners and tenants is long-term and can be personal. There is nothing ephemeral here. If dogs are not allowed in restaurants, the consequences are minimal and fleeting. The rule may be prudent or unnecessary, but neither the dog owner nor the restaurant is severely impacted. An owner of rental property, on the other hand, can be saddled with a difficult-to-impossible tenant for years. The tenant is free to end the relationship; the owner is not. In some

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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.**

Part of our mission as the legal and political arm of the BPOA is to provide updated information on rules and regulations for Berkeley rental properties. Whether you've been in the business for one year, or 40 years, there is always something new cropping up. It will come as no surprise when we tell you that reading the language of the regulations practically requires a law degree. One could go in circles with references to the Berkeley Municipal Code, Berkeley Rent Stabilization Ordinance, building code or state laws.

One area that often gets overlooked — and is easy to unintentionally violate — is fair housing law. Between the federal rules, state law and local regulations, you could easily discriminate against a prospective tenant and not even know it!

We attend legal presentations on your behalf and pass the knowledge on to our members. No one wants to get ensnared in the ever-popular trap of “testers.” Testers are used by various housing rights organizations to “test” whether a landlord is discriminating against a prospective tenant. If you are advertising an open unit, they will call you and ask questions that are specifically designed to entrap you in making a discriminatory statement. The evidence is then used to file a Fair Housing discrimination claim against you. These claims often require legal representation to defend them.

The biggest challenge with fair housing laws are not the obvious discriminations (race, gender, sexual preference) but instead, they are the less obvious ones (emotional support animals, invisible disabilities, or source of income).

Here are some dos and don'ts of discrimination.

Emotional Support Animals

This is the most common area in which landlords are confused, flabbergasted and just plain shocked. There is a difference between a service animal (one that is professionally trained to help an individual with a specific disability), and an emotional support animal (one that is not trained for a task yet provides emotional support for a disability). Both are considered “assistive” animals, and both are protected classes under state and federal law. This means that if a tenant presents one, you must provide reasonable accommodation. For example, if your

building has a “no pet” policy, and a tenant requests the addition of an emotional support animal, the landlord must “reasonably accommodate” the tenant by waiving their no pet policy. You have the right to place house rules that dictate certain requirements such as being on a leash in common areas, the owner's responsibility to clean up animal waste and proper care of animal to reduce flea infestations. But you do not have the right to request additional “pet rent” or add to the security deposit. You may not ask *what* disability they have that requires their need for the animal, but you do have the right to request verification of the need for the animal by a professional. And what if a tenant requests more than one emotional support animal? You may ask that a trained professional verify and clarify in a letter the need for more than one animal. Either way, that dog, cat, miniature horse, hamster, or pig must be permitted if the tenant has written proof of the need.

Other Accommodations of Disabilities

There are many ways in which a tenant may request reasonable accommodation for their disability — whether visible or invisible. This can include adaptation of procedures related to communication or payment of rent, permission to have a live-in aid, changing of parking rules or waiving a “no cosigner” policy for a tenant whose income is limited because of their disability. Although an owner is not always required to pay for reasonable accommodation, best practice is to engage a tenant in meaningful dialogue that helps clarify what their specific need is and how you might be able to reasonably accommodate them. A landlord does have the right to deny an accommodation if the landlord can demonstrate that the accommodation provides an “undue financial or administrative burden.” For instance, if you are asked to install an elevator in a two-floor building so your tenant may get to their second-floor unit, you may have grounds to deny based on an undue financial burden because of the cost to install an elevator.

Making Lawful Inquiries of a Prospective Tenant

Once you've selected the tenant you are *most likely* to consider for the unit, you have the right to make “lawful inquiries” into their background. They include employment history, rental history, references, social security

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State Supreme Court Agrees to Hear UC Berkeley on Housing Plans

Bob Egelko, San Francisco Chronicle, May 18, 2023

The state Supreme Court agreed Wednesday to consider UC Berkeley's plan to take over the historic People's Park and build housing there for students and the homeless, setting aside a lower-court ruling that would have required the university to consider alternative housing sites.

UC Berkeley now provides housing for only 23% of its students, the lowest rate in the UC system, and says the new development would help to meet that need. Its \$312 million project would build housing in the park for 1,111 students in a 148-unit complex.

A separate building would contain 125 beds, with either half or all going to homeless people, depending on financing. During construction, the university says, it would provide shelter for about four dozen unhoused people who now sleep at the park. More than half of the 2.8 acres would remain open space, with a new grove of trees.

But neighborhood groups want to preserve the park and say the university has less-disruptive options to build housing elsewhere. In February, the state's First District Court of Appeal said UC Berkeley had failed to consider those options in its legally required environmental review of the project.

In a 3-0 ruling, Justice Gordon Burns said the university's own development plan had identified several other nearby properties as potential housing locations, but the UC Regents refused to assess alternative locations or provide any "valid reason" for that decision.

Burns also said the environmental report "failed to analyze potential noise impacts from loud student parties in residential areas near the campus" or propose any measures to reduce the noise. He said the court was not requiring UC Berkeley to abandon the housing project, but instead to conduct a new study and see if alternatives exist that would minimize harmful impacts.

On Wednesday, the state's high court voted unanimously to hold a hearing on UC Berkeley's appeal, an action that set aside the appeals court's mandate to conduct a new review and adequately consider alternatives before going ahead with the project. The court denied review of a separate appeal by neighborhood opponents of the plan arguing that the university should also be required to consider addressing its housing shortage by limiting enrollment.

Both Gov. Gavin Newsom and the city of Berkeley had filed arguments urging the court to take up the case and overrule the appeals court.

"Solving the housing crisis is one of the governor's top priorities, and the State is making substantial progress," but the appellate ruling "threatens to disrupt that progress, opening a door for opponents of housing development to delay or block essential new projects," Attorney General Rob Bonta's office, representing Newsom, told the court.

The state's lawyers also said residents in other communities have tried to block new urban housing by claiming they would cause excessive noise and would be encouraged to make those claims if the appellate ruling was upheld.

"It is not difficult to imagine, for example, existing residents citing this case in opposing low- and moderate-income housing, or developments likely to attract young-adult residents or families with children, or designed to support the integration of individuals with disabilities into the community," Newsom's filing said. State attorneys said Berkeley's noise-control ordinances would adequately protect neighbors from any noise generated by new housing.

The site, three blocks south of campus and just off Telegraph Avenue, was acquired in 1967 by the university, which bought out the owners of homes on the property and tore down their buildings to make room for dormitories.

Students opposed to the plan planted a garden and named the land People's Park, and Gov. Ronald Reagan responded by sending in police to remove the plants and build a fence. During a violent protest in May 1969, officers fatally shot one man and wounded others. But the protesters ultimately prevailed, and it is still a park.

Dan Mogulof, a UC Berkeley spokesperson, said Wednesday's court's order was "definitely a positive development" and that "we will look forward to making our case." He said the university was awaiting word from the court on what issues it would consider.

Berkeley Mayor Jesse Arreguin also welcomed the court's action. "I am confident that the court will make the right decision in allowing the creation of much needed student housing, housing and services for the homeless, and the preservation of open space that honors the legacy of the park," he said in a statement.

There was no immediate comment from the neighborhood groups. Earlier, their lawyer, Thomas Lippe, disput-

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So San Francisco is an Unlivable, Undesirable Hellhole? Try Finding an Apartment Here

Soleil Ho, San Francisco Chronicle, May 15, 2023

With all the national discourse about San Francisco and Oakland being the last two stops on the highway to hell, with every street looking like the bloody elevators in “The Shining,” you’d think finding a place to live here would be a breeze.

But as someone who recently moved to a new place in San Francisco, I can assure you finding an apartment is as absurdly competitive as ever.

Since 2020, when the pandemic allegedly started making the Bay Area more affordable as people moved to Texas or Sonoma or wherever, about once a month or so, I’ve committed my own style of self-harm by looking at rental and real estate listings in the Bay Area — and watch the number of listings rapidly disappear when I scoot the price slider toward what I can actually afford.

What inevitably remains in my price range is a dubious collection of flipped gentri-Frankenstein houses in West Oakland, 300-square-foot condos and moist little shacks, each more questionable than the last. By the third hour of searching, I usually start fantasizing about joining the Swedish death cult from the movie “Midsommar.” They might be a little too into public executions, but room and board are free.

These online searches are usually just idle curiosity, but with all the recent talk of economic doom loops and violence and mass exodus, I allowed myself the possibility of actually nabbing something with enough home studio space for my artist husband. Sure enough, I was drawn to what seemed like the perfect apartment in a cute multi-story house in Oakland: lots of sun, quirky details, a backyard populated with towering trees. And I could have a dog! Of course, there was a catch.

When I shared the posting with some friends from the neighborhood to ask for their thoughts, they warned me that the live-in owner, a bona fide “mom-and-pop landlord,” was an anti-vaxxer, a screamer and a vocal adherent to QAnon conspiracy theories. I confirmed this by looking up the owner’s social media pages, full of posts lambasting the media for furthering the COVID “hoax” and comparing CDC officials to Nazis.

There were other things that were red flags, too, like gaping holes in the walls that seemed like easy entryways for rats.

Could I live with that? Could I live with my rent money potentially contributing to the next Jan. 6 ... if there was free laundry?

The answer: Yes. Yes, I could. And so could plenty of other people, apparently.

Because the price of the place was somewhat reasonable, there were already loads of applicants. Feeling the pressure, I applied.

But even though everyone else saw the same apartment that I did, and the QAnon stuff was easy to find online, I was outbid by someone offering to pay more rent than the landlord was asking for.

It was the same at other apartment showings and open houses around San Francisco, Oakland and surrounding cities. I repeatedly found myself among flocks of hopeful renters cheeping at the landlords and real estate agents like baby birds hoping for a bite of that sweet, affordable worm.

Yes, people did leave cities during the early years of the pandemic, hoping for more socially distanced yards, perhaps. But does that mean finding an apartment is now easier? The answer really depends on who you mean by “people.”

That 2019-2021 wave of out-migration included some of the richest people in the region. According to IRS data, the average annual income of those who left San Francisco in that time span was \$153,000. By contrast, the average income of those who stayed was \$117,000. Even if those who moved away were also renters, those of us who stayed are unlikely to be able to afford their vacated homes.

While you had a chance of getting a place here at a relatively humane price in 2020, all that remains is the dull hangover of first-month-off “deals” that artificially lower the listed rent. Now prices are about the same as they were before the pandemic: 61.7% higher than the national average, according to Apartment List.

But the material conditions of the people looking at those apartments have taken a serious hit.

The fancy jobs that could help you afford life in San Francisco are now harder to find. Top tech companies like Salesforce went through a brutal series of layoffs, with more than 141,000 workers let go already this year, according to Crunchbase. (For a detailed breakdown of layoffs, see The Chronicle’s layoff tracker.)

And on the other end of the spectrum, public assistance for the city’s low-income residents is in bad shape. Just one example is CalFresh, the state nutrition assistance program that followed federal guidelines and recently reverted to

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Derek Barnes, CEO, East Bay Rental Housing Association, SF Bay Times, April 2023

Many housing providers (for-profit and non-profit) are extremely upset and frustrated. Cities like San Francisco, Oakland, and Berkeley want to introduce more restrictive housing laws with slow “ramp downs” of a three-year eviction moratorium that has damaged the housing market across the Bay Area.

Lawmakers and municipal leaders created a crisis by upholding three-year health emergency mandates and eviction moratoriums. They introduced moral hazards and emboldened people to destroy property and to stop paying rent without adequately funded government programs in place. It has created an unpaid rent bubble and consumer debt estimated to be as high as \$3B across the Bay Area’s nine counties. Municipalities have insufficient plans to help households pay what is owed and provide lifelines to rental property owners in financial distress or foreclosure.

During the pandemic, legislators essentially sanctioned the theft of service with blanket protections where many renters, without proven COVID-19 financial hardship and loss of income, decided to stop paying rent. Essentially, the government allowed people to use housing services without paying since March 2020. It would be state-sanctioned theft if this was permitted in any other industry.

Housing is a human right. No rent on stolen land. Stop all evictions. No right to profit from renters. These are the messages and new rules-based ideology that radical socialist progressives (SoProgs) push and institute housing policies authored by self-dealing lobbying attorneys. Organizations like the Alliance of Californians for Community Empowerment (ACCE) aim to depress real estate values, and control socialized housing under nonprofit or public housing models. This is fundamental to their mission, no matter the cost and loss for smaller property owners.

Extreme renter entitlement and protections are so pervasive in Oakland and Berkeley and fueled by a plethora of nonprofit tenant litigation organizations. For many years, organizations like ACCE, with tentacles into local city governments, targeted large corporate rental owners/operators as the businesses taking advantage of renters. Today, there’s also a full-throated effort to demonize small rental owners. In these cities, smaller rental housing providers own/operate most older and affordable housing units. They are typically the most vulnerable and under-resourced rental businesses that struggled for three years during the

Eviction Moratorium if they didn’t receive rental income. In major cities like Oakland and San Francisco, increased homelessness, open-air drug use, and crime have become the norm. These conditions have also contributed to housing challenges and resident flight. Recently in San Francisco, I walked four blocks on Eddy Street (Market St. to Jones St.) and was appalled by what I saw happening in broad daylight — right in front of the Tenderloin SFPD. This is the ongoing reality that many residents, workers, and tourists face daily in our cities. It further erodes our cities’ value and esteem, as well as stifling business and housing investment.

New attitudes of political correctness and extreme liberalism by SoProgs can cloud good judgment and impede common sense. These views enable a type of cultural conditioning that we’ve not experienced before. The acceptance and enablement of lawlessness drive out businesses, residents, and tourism — desperately needed commerce and tax revenue to fund municipal investments.

These new attitudes are often rooted in misguided equity and justice initiatives that can backfire and create unintended consequences. For example, good intentions for renters can disenfranchise vulnerable and under-resourced Black,

Brown, immigrant, and elderly rental property owners through housing enforcement policies, rent increase caps, emergency mandates, and forced owner subsidies. Unvetted programs and policies often require no proof of renter financial hardship or qualification to reside in affordable rent-controlled units. These activities ultimately destabilize housing and real estate markets, reduce the availability of rental units, and force communities of color that own real estate and rental property out of the market.

Historically, communities of color have worked hard to own property and homes, playing by rules stacked against them despite decades of injustice and racist housing policies. Rental owners of color largely provide most of the below-market rate housing to other people of color. Now, more radical SoProgs are on a mission to devalue their properties by installing new rules through unvetted policies, using scare tactics, and stealing opportunities to build equity and generational wealth in communities of color. It’s an insidious new form of blockbusting we’ve seen before, and the enablers must be stopped before the damage to the most vulnerable communities and housing market are irreparable.

These new attitudes are often rooted in misguided equity and justice initiatives that can backfire and create unintended consequences.

St. Paul Reconsiders Draconian Rent Controls

Frederick Melo, Pioneer Press, May 28, 2023

St. Paul voters approved one of the nation's strictest rent control policies in November 2021, imposing a 3% cap on rent increases. The city's administrative rules have offered landlords a way to seek exemptions for capital improvements, increased operating expenses and new services, and the St. Paul City Council approved additional changes last fall through a wide-ranging ordinance amendment.

The new provisions, which took effect Jan. 1, include:

- The city council approved a complete exemption from rent control for all new construction for 20 years. A lookback period exempts apartments built within the past 20 years, as well.
- Affordable housing was exempted, too. That includes subsidized housing, deed-restricted housing and other apartments whose rents are maintained below a certain level through written agreements with city, state or federal government.
- The city council's ordinance amendment includes improved tenant notifications when a landlord seeks a rent control exemption from the city.
- A new "vacancy decontrol" provision allows landlords to raise rents on vacant units by 8% plus inflation, as measured by the consumer price index. A "just cause"

protection aims to ensure that landlords cannot empty apartments simply for the sake of raising rents.

- The amendments also clarify how utilities are factored into rent caps.
- Citing increased costs, landlords can use an on-line form to self-certify rent increases of up to 8%. Through an administrative change, there is no upper limit to how high rents for a particular unit can climb with city staff approval, provided there's sufficient documentation of landlord expenses.

Do You Have an Eviction as a Result of the Pandemic? We can help!

The Berkeley Rental Housing Coalition (BRHC) Eviction Legal Support Fund is a way for rental housing providers to be supported in their right to legally evict a tenant, without having to bear the full cost to do so.

Any BRHC member in good standing (of at least one year) can submit their case to our Executive Director for review. BRHC will reimburse a member 50% of their legal costs, up to \$15,000!

Contact Krista Gulbransen, krista@bpoa.org



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Tiffany Van Buren, BPOA Deputy Director

Fair Housing Testers: Are You Prepared to Be Put to the Test?

Let's talk about moles. No, I don't mean the garden variety. I'm referring to the spy-type moles hired by agencies to catch housing providers engaging in unlawful or discriminatory practices. These people, called Fair Housing Testers, can work for state fair housing departments, private fair housing advocacy groups, or the Department of Justice. They undergo training to learn how to "act" in the role of someone seeking housing; they're given specific guidance on what to wear, accents to use, questions to ask, and even answers to avoid giving. They're intentionally tricky, so you must be prepared for your potential interactions with them. Their goal is to ascertain whether you are following the law and are fair housing compliant. Your goal should be to ensure you are.

Each Fair Housing Tester is given a "profile," and poses as a potential tenant by inquiring about rental housing. They may call a number posted on an ad, send an email, or show up at an Open House. Their job is to find out whether rental housing providers treat people differently based on certain protected characteristics, such as race, religion, gender, national origin, disability, or familial status. Here are a few of the questions you may be asked, or scenarios that may play out.

1. A caller asks, "Do you accept dogs?"

To prevent violating protections for those with Service Animals (ADA) or Emotional Support Animals (FHA), you can say, "We do/don't allow pets and comply with all Fair Housing Ordinances."

2. At an Open House for a small one-bedroom apartment, you overhear someone saying, "I'm getting married next month! My fiancé has a daughter; I'm excited about becoming a stepdad."

You cannot refuse to give this person an application if they request one. Even if this person applies alone and qualifies for the unit on their own merits, you cannot prevent their spouse and stepchild from moving in with them, as families are a protected characteristic.

3. You receive an email from someone who identifies themselves as Black. They ask if the neighborhood is predominantly Black because they "prefer to live in Black neighborhoods."

This should never be answered with a yes or a no.

Invite the person to visit the neighborhood to see for themselves. Inform them of any Open House dates or offer a showing. It is not our place to give demographics, statistics, or personal opinions; this can be perceived as "steering" and is illegal.

4. A caller asks if your property is handicapped accessible.

The worst answer you can give is NO. Disclose the property address so the caller can locate the property on Google Maps. Direct them to your online listing, where, hopefully, your photos will convey enough information about the property and the unit's location within the property for them to draw their own conclusion about its accessibility. Offer to show them the unit in-person or virtually; Facetime or WhatsApp are good options if you have a strong enough cell signal.

5. A caller asks to schedule a showing and explains they're looking for a unit large enough to run a daycare from.

Under California law, running a licensed daycare facility or licensed family child care home is *not* considered running a business out of the property. Ensure you're treating this caller the same as any other caller; inform them of your Open House or offer a private showing.

The examples above only scratch the surface of what you may hear from a Fair Housing Tester. As a Berkeley Property Owners Association member, you have access to education to ensure you won't violate any Fair Housing laws. If you need a refresher, log onto our website, and watch Steve Williams' June 15, 2022, webinar, Fair Housing & Reasonable Accommodations, available for playback in our Content Library under On-Demand Webinars.



Federal Lawsuit Challenges New York's Newly Minted Rent Law

Kathryn Brenzel, *Realdeal.Com*, May 8, 2023

Nearly four years ago, landlord groups filed a federal lawsuit challenging New York's newly minted rent law, expecting to fail at every level — until the last one.

On Monday, with the anticipated trail of lower court losses behind them, the groups took their fight to the highest court in the land.

The Rent Stabilization Association, the Community Housing Improvement Program and a few individual landlords filed a petition asking the U.S. Supreme Court to consider their challenge to New York's rent stabilization law.

The groups first filed a lawsuit in July 2019, alleging that the state law, which regulates leases at nearly one million apartments throughout New York City, violated the Fifth Amendment's takings clause and the 14th Amendment's due process clause.

The complaint, which not only challenged the Housing Stability and Tenant Protection Act of 2019 but rent stabilization as a concept, charged that the law deprives owners of the use of their properties while also failing to address New York's affordable housing shortage.

To date, the courts have not agreed. Most recently, the Second Circuit affirmed the New York Eastern District Court's dismissal of their case, as well as a similar suit brought by mom-and-pop owners Dino, Dimos and Vasiliki Panagoulas.

In their petition, the groups ask the court to affirm a "fundamental limitation against undue burden on select property owners" — that is, landlords forced to provide "public assistance" to tenants through low rents, lease renewals and succession rights.

The city's Rent Guidelines Board considers tenants' ability to pay rent rates when it sets annual rent increases, leading to "a widening gap between owner costs and regulated rents," the petition states.

This month, the board proposed a two to five percent increase on one-year leases and four to seven percent for two-year agreements, rates criticized by tenants and landlords for diametrically opposed reasons. The 2019 changes to the rent law cut off other ways for landlords to raise rents on regulated apartments.

The petition calls on the court to "clarify the framework that applies when a law places the burden of rectifying a societal problem on a select minority of property owners."

The "easily demonized owners" are "vastly overwhelmed ... by the combined voting power of the tenant-beneficiaries" and taxpayers who would otherwise pay for providing affordable housing, the petition states. "Politicians can make tenants and taxpayers alike happy by shifting the cost of providing below-market-rate housing onto a minority of building owners."

The landlords are pinning their case on a 2021 decision by the high court. In *Cedar Point Nursery v. Hassid*, the court's conservative majority deemed unconstitutional a California law requiring employers to allow union organizers onto their property for up to three hours a day. The Second Circuit rejected landlords' comparison with New York's rent law.

The landlord groups argue that the rent law "confers a much more extensive right to physically invade" as stabilized tenants are guaranteed lease renewals, and owners' ability to reclaim an apartment are extremely limited. Under the law, owners can take back a single unit if they plan to use it as a primary residence and can prove "an immediate and compelling necessity."

The petition argues that the Second Circuit took the "erroneous view" that the takings clause applies differently in "the landlord-tenant context."

The petition also warns that other cities may follow New York's lead in "enacting ever more restrictive regulation that commandeers private property." It points to laws in San Francisco and Los Angeles that limit when an owner can reclaim apartments.

RSA and CHIP acknowledged early on that their challenge's chances depended on the nation's highest court, though there is no guarantee the case will be heard. In fact, the Supreme Court has previously declined to take up rent control cases and only reviews about 100 to 150 of the more than 7,000 petitions it receives annually.

Beacon Properties

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As Housing Prices Surge, Rent Control is Back on the Ballot

Janie Har and Michael Casey, Associated Press

With rental prices skyrocketing and affordable housing in short supply, inflation-weary tenants in cities and counties across the country are turning to the ballot box for relief. Supporters say rent control policies on the November ballot are the best short-term option to dampen rising rents and ensure vulnerable residents remain housed.

Opponents, led by the real-estate industry, say rent control will lead to higher prices for tenants in housing not covered by rent caps, harm mom-and-pop landlords relying on rental income for retirement, and discourage the construction of badly needed affordable housing. They have spent heavily to stop ballot initiatives, even going to court to halt them.

In Orange County, Florida, home to Disney World and other theme parks, voters will consider a ballot initiative to limit rent increases to the annual increase in the consumer price index.

But a court ruling last week means that even if it passes, it could be nullified.

Proponents in Orlando and other Orange County cities point to a population that has increased 25% since 2010 and rents that jumped 25% between 2020 and 2021 — and experienced another double-digit increase this year. The housing shortage was magnified by Hurricane Ian, with an estimated 1,140 rental properties suffering \$44.5 million in damage.

“I’ve had a lot of constituents reach out to me, and they are fearful of becoming homeless. They don’t know what to do,” said Orange County Commissioner Emily Bonilla, who authored the ballot initiative ordinance after hearing from tenants facing rent increases upwards of 100%.

Last year, voters in St. Paul, Minnesota, passed a ballot measure capping rents at 3% a year while residents across the river in Minneapolis backed a measure allowing the city council to enact a rent control ordinance.

This summer, Kingston, New York, became the first upstate city to enact rent control. The measure means around 1,200 units — buildings built before 1974 with six or more units — must limit rents to a percentage set by a rent guidelines board.

Boston’s Mayor Michelle Wu was elected last year and made bringing back rent control to the city part of her

campaign. The biggest hurdle to that proposal is that Massachusetts voters narrowly approved a 1994 ballot question banning rent control statewide.

“Rent stabilization can provide protections for everyone, but do so in a way that really targets benefits to low-income renters, renters of color, renters who are most desperately impacted by housing instability,” said Tram Hoang, a housing policy expert who was involved in the St. Paul campaign.

The fight over rent control has been most intense out West, where in 2019, lawmakers in California and Oregon approved statewide caps on annual rent increases. California’s annual cap cannot exceed 10% and Oregon’s is set at 7%, plus the consumer price index.

Both laws exempt new construction for 15 years, a compromise to encourage developers to keep building, and apply only to certain units.

But that hasn’t quelled tenant activism in California, where nearly half the state’s 40 million residents are renters. Advocates say the statewide law — which expires in 2030 — does not go far enough.

Voters in the San Francisco suburb of Richmond and Southern California

beachside city of Santa Monica will consider measures to further tighten existing rent caps to a maximum of 3%.

In the city of Pasadena — home to the annual Rose Parade and Rose Bowl college football game — voters will consider a measure to create a rent oversight board and limit rent increases to 75% of the consumer price index, which supporters say translates to 2% to 3% a year.

Rent stabilization advocates failed to collect enough signatures to qualify for the 2018 ballot, and they thought it would be hard this time around because the state had enacted protections. But campaign field director Bee Rooney said tenants financially wrecked by the pandemic were eager to back the initiative.

Opponents of the measure, which include the national and state realtors associations, say curtailing rent increases to a fraction of inflation will result in property owners taking rentals off the market and doing minimal maintenance.

Some studies, however, have shown that rent control can reduce the number of housing units available and discourage landlords from maintaining them.

continued on page 14

The Genius of Steven Wright

1. I'd kill for a Nobel Peace Prize.
2. Borrow money from pessimists — they don't expect it back.
3. Half the people you know are below average.
4. 99% of lawyers give the rest a bad name.
5. 82.7% of all statistics are made up on the spot.
6. A conscience is what hurts when all your other parts feel so good.
7. A clear conscience is usually the sign of a bad memory.
8. If you want the rainbow, you got to put up with the rain.
9. All those who believe in psycho kinesis, raise my hand.
10. The early bird may get the worm, but the second mouse gets the cheese.
11. I almost had a psychic girlfriend... But she left me before we met.
12. OK, so what's the speed of dark?
13. How do you tell when you're out of invisible ink?
14. If everything seems to be going well, you have obviously overlooked something.
15. Depression is merely anger without enthusiasm.
16. When everything is coming your way, you're in the wrong lane.
17. Ambition is a poor excuse for not having enough sense to be lazy.
18. Hard work pays off in the future; laziness pays off now.
19. I intend to live forever... So far, so good.
20. If Barbie is so popular, why do you have to buy her friends?
21. Eagles may soar, but weasels don't get sucked into jet engines.
22. What happens if you get scared half to death twice?
23. My mechanic told me, "I couldn't repair your brakes, so I made your horn louder."
24. Why do psychics have to ask you for your name
25. If at first you don't succeed, destroy all evidence that you tried.
26. A conclusion is the place where you got tired of thinking.
27. Experience is something you don't get until just after you need it.
28. The hardness of the butter is proportional to the softness of the bread.
29. To steal ideas from one person is plagiarism; to steal from many is research.
30. The problem with the gene pool is that there is no lifeguard.
31. The sooner you fall behind, the more time you'll have to catch up.
32. The colder the x-ray table, the more of your body is required to be on it.
33. Everyone has a photographic memory; some just don't have film.
34. If at first you don't succeed, skydiving is not for you.
35. If your car could travel at the speed of light, would your headlights work?
36. I busted a mirror and got seven years bad luck, but my lawyer thinks he can get me five.
37. Everywhere is within walking distance if you have the time.
38. Tell a man that there are 400 billion stars and he'll believe you. Tell him a bench has wet paint and he has to touch it.
39. I went to a restaurant that serves 'breakfast at any time'. So I ordered French Toast during the Renaissance.

from page 5

SF Apt Search

pre-pandemic funding rates for recipients despite the fact that inflation has made the cost of food blast into space.

In the end, I did move to a new apartment, a spot that was bigger and about a third more expensive than my previous home. Being able to stay in San Francisco and have more breathing room feels worth the price, but I'm at my limit. I keep saying that. Of course, I quickly found out that my next-door neighbor had been considering the exact same place until I snapped it up within five days of it being posted.

For all the doomsday talk about San Francisco and the Bay Area, it's still an incredibly desirable place to live. And those of us committed to sticking it out are left making more compromises, competing with one another for marginally more tolerable conditions. I know as a decadent non-coder I'm never going to be able to buy a home here. Instead, like a frog in a slowly boiling pot, I'll just watch the percentage of my income devoted to rent creep up, digit by digit. Until finally, it's over.

Office-To-Housing Fee Cut Proposed for San Francisco

J.K. Dineen, *San Francisco Chronicle*, April 5, 2023

In the latest in a series of policies aimed at encouraging San Francisco commercial property owners to convert vacant office buildings to housing, Supervisor Matt Dorsey on Tuesday will introduce a bill that would exempt such conversions from a slew of fees.

The legislation would mean that office-to-residential converters would be exempt from paying fees on bicycle parking, child care, transit sustainability and public art. Taken together, the fees represent well under 10 percent of project costs “but could be the difference between feasible and not feasible,” Dorsey said.

“This is a small step, but it’s part of an accumulation of small steps our city will be taking over the next few years,” he said. “I am committed to removing constraints and barriers that make building housing more difficult.”

Dorsey’s district, which encompasses the office-heavy districts of the South of Market and south Financial District, has been among the hardest hit by the work-from-home sea change brought on by the pandemic. Retailers and restaurants have been forced to shutter as office workers have shunned the workplace. A recent Stanford University study concluded that the average downtown office worker spent \$168 per week near their workplaces prior to the pandemic and that the shift to working from home has represented a \$1.2 billion annual blow to the downtown economy.

Beefing up the residential population downtown would make the streets more lively, safer and increase the dollars flowing into the cash registers of small businesses, Dorsey said.

Having a larger residential population would insulate “the corner stores and restaurants and small businesses from the boom-and-bust cycles we have seen.”

“We have to do everything we can to get things unstuck and moving in the right direction,” he said.

Last week, Mayor London Breed and Board of Supervisors President Aaron Peskin introduced legislation to relax requirements for downtown office-to-housing conversions to save developers time and money. That ordinance would also loosen rules around Union Square to help the struggling shopping district become less reliant on large retail stores.

Also on Monday, the Board of Supervisors Land Use and Transportation Committee held a hearing to discuss a report on the feasibility of residential conversions, with testimony from the urban think tank SPUR, the Urban Land Institute and the global architecture firm Gensler.

While the conversion concept of transforming office buildings into residential homes has been widely discussed and studied over the last two years, so far only one application has been filed with the city, a 27-unit reuse of the historic Warfield office building at Taylor and Market streets. Other property owners have studied conversions but concluded that the costs would be too high to make it profitable.

At the hearing Monday, Sujata Srivastava, SPUR’s San Francisco director, said lowering development costs would be key.

“None of it really pencils out as a residential conversion unless you are able to reduce construction costs,” Srivastava said.

Ben Tranel, a partner with Gensler, said they studied 700 buildings and found 25 that were ripe for conversion. Of the 25, 10 were considered excellent candidates, high-rises with floor plates between 12,000 and 25,000 square feet. The buildings, totaling 4 million square feet, could generate about 4,000 housing units, he said.

QUOTE OF THE MONTH

*Whatever it is the government does,
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somebody else.*

— P. J. O’Rourke

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5 Reasons Why Economists and Housing Experts Say Rent Control Doesn't Work

California Rental Housing Association

#1 — Reduced Housing Supply

While the intent of rent control may be to make housing more available, economic studies indicate it discourages investors from constructing, rehabilitating, and converting housing into rental residences. Some owners may be forced to sell their properties due to rising costs, further depressing supply.

#2 — Causes More Harm Than Good

According to the Manhattan Institute's Rent Control Does Not Make Housing More Affordable, regulating rent is not a solution to poverty, inequality, or segregation. Instead, it harms disadvantaged groups and acts to restrict the supply of housing by transferring wealth to current tenants at the expense of future tenants. Also, "Many of rent control's benefits typically flow to higher-income households even as rent control drives up rents for everyone else."

#3 — State & Local Revenue Loss

The Legislative Analyst estimated that the most recent rent control initiative (Prop.21 in 2020) could result in a loss of "tens of millions of dollars" a year due to lower property tax collection from declining rental housing values. Rent caps reduce rental income, which also lowers personal income and business taxes paid to the State.

#4 — Less Funding for Public Services

Lower State and local revenues mean less funding for critical public services, such as health care, education, public safety, and transportation. Services provided by local governments would be hit hardest because the largest revenue impact will be on property taxes, which are paid to local governments.

#5 — Undermines State Housing Policies

Rent control initiatives, like the one submitted in December of 2022, either limit or outright bar the State from enacting laws that affect local rent control. The end result would be a hand-off of cohesive statewide housing policies to a patchwork of 539 local rent boards to do as they please WITHOUT a vote of the people.

From the California Rental Housing Association (CalRHA) communication to state legislators about the damages of rent control in rental housing. CalRHA utilizes infographics and "leave behind" pieces that help simply explain the damaging effects of increased regulations on housing providers across California. As a member of BPOA, you are automatically a member of CalRHA, our statewide advocacy organization.

Summer Social set for Thursday, June 15th!

5:00 PM at Heroic Italian

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| DATE | TOPIC |
|---------------------------------|--|
| Thursday, June 22, Noon | Monthly Owners Forum with Sam Sorokin, Premium Properties |
| Wednesday, June 14, Noon | Everything You Need to Know About Fair Housing & Reasonable Accommodations |
| Thursday, July 27, Noon | Credit Screening: How to Compare Data and Use Reports |
| Thursday, June 15, 5:00-7:00 pm | BPOA Summer Social: Come enjoy drinks, appetizers & networking! |

And...check out our Landlord 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.

“What’s being proposed here is draconian and for the most part landlords who have good tenants aren’t trying to get rid of them,” said Paul Little, president and CEO of the Pasadena Chamber of Commerce.

Michael Wilkerson, senior economist at Portland, Oregon-based ECONorthwest, describes both the California and Oregon state laws as “anti-price gouging” measures aimed at protecting the most vulnerable tenants from exorbitant increases, while encouraging new housing development.

Rent-control policies have been around for decades, put in place after World War II in New York City and elsewhere to combat rising housing prices and again in the 1970s in the Northeast and California. However, the real-estate industry has since succeeded in passing state laws that made it difficult, if not impossible, for many local municipalities to cap rents.

The data on rent control has been mixed. The policy, according to an Urban Institute report, was found to have reduced rent on covered units in Cambridge, Massachusetts, San Francisco and New York but resulted in no significant decreases in New Jersey cities.

Some studies, however, have shown that rent control can reduce the number of housing units available and discourage landlords from maintaining them.

Opponents also say rent regulation can scare off developers. St. Paul’s original ordinance, for example, applied to almost all housing and mandated landlords stick to the 3% cap even with new tenants.

Within weeks, council members were hearing from developers who blamed the new law for scuttling housing projects because they lost funding. Building permits issued for new housing through August plummeted 31% from the four-year average.

In response, the city council approved amendments in September to exempt low-income housing as well as new construction for 20 years. It also allows landlords to raise rents 8% plus the consumer price index after a tenant moves out.

Orange County’s ballot measure is up in the air after an appeals court rejected the proposal last week and suggested it won’t be certified even if voters approve it.

The court, which acknowledged the state law “set an extremely high bar” for local governments to pass rent control ordinances, said a consultant hired by the county didn’t identify a housing emergency — a requirement under a 1977 state law preempting local rent control.

The county plans to file a motion for a rehearing and with ballots already out, the Orange County Supervisor of Elections said it has no plans to issue new ones. Supporters of the measure said they will keep campaigning.



JUNE MEETINGS & EVENTS

Monthly Owners Forum with Sam Sorokin, Premium Properties

Thursday, June 22, Noon

Everything You Need to Know About Fair Housing & Reasonable Accommodations

Wednesday, June 14, Noon

Credit Screening: How to Compare Data and Use Reports

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states, it is easier to get a divorce than terminate a residential lease. No one should be forced into a long-term relationship against his/her will.

In a way, property owners are a precursor to the current rage of identity politics. We are all members of groups rather than individuals. To the woke, all groups are either oppressors or oppressed. Landlords, of course, are an oppressive class.

To their credit, the woke among us have highlighted some nasty chapters in American history and sought recognition that past group behaviors have had lamentable consequences. Slavery is just the top of the list. However, the

woke agenda for reconciliation is scary. The subscribers to identity politics are quite willing to hold contemporary groups responsible for sins of the past which were committed by those to whom some current-day group can be linked, however tangentially.

This is egregious. We are adults and accept adult responsibility for our actions. Certain practices may well be reasonably subject to oversight, but enforcement should be for actual violations. Preemptive regulation is bureaucratically cumbersome, largely unnecessary, and frankly, downright insulting.

number, identification, bank account numbers, number of intended occupants in the unit and proof of income. Be careful at what point in the process you make these inquiries. Many of us are used to having multiple prospective tenants fill out applications requesting such personal information as social security number, bank account details or proof of identification. It is recommended that you only ask for this level of detail once you have identified the tenant(s) you are most likely to offer the unit to. You don't want to be responsible for holding onto applications with personal information for tenants you never intend to offer the unit to. And remember, in Berkeley many owners are prohibited from asking about a prospective tenant's criminal background!

Renting to Single Moms with Kids Only

It is illegal to discriminate based on "familial status." Most of us translate this into making sure we don't discriminate against those who have children. But what happens if you want to help out a certain class of people that you think deserves a helping hand? Take the case of a landlord who specifically requests that only single moms with children be considered for their units. This is the perfect example of unintentional discrimination. You think you're helping someone out, but according to law, you're

discriminating against others who have the right to be reasonably considered for the rental (a two parent family, for instance).

What's the best way to protect yourself against unintentional discrimination? Make sure you have a clear and written rental criteria policy. This will help guide tenants as to what your requirements are that make them "fit for tenancy." And make certain that you truly consider all potential applicants, regardless of what is initially presented to you (i.e., "do you accept pets?" or "do you accept Section 8?") Don't get caught in the trap that's constantly set for the uneducated landlord. Remember, you cannot state that you do not take Section 8 housing vouchers. You must consider those tenants as you would any other prospective tenant.

This information is brought to you by me — the Executive Director of the Berkeley Rental Housing Coalition. The only way this information can keep coming to you is if 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.

State Supreme Court Will Hear UC Berkeley on Housing Plans

ed Newsom's arguments, saying, "It is unfortunate that Gov. Newsom has chosen to blame community activists and the California Court of Appeal for enforcing a good law (the California Environmental Quality Act) when he should be investigating the regents of the University of California for failing to build enough housing to accom-

modate the dramatic increase in student enrollment at UC Berkeley in the last 20 years."

The case is *Make UC a Good Neighbor v. UC Regents*, S279242.

Bay Area Cities by Population Loss 2020-2023

| RANK | CITY | % ANNUAL INCREASE | 1-BR RENT | LOSS | % CHANGE |
|------------|----------------------|-------------------|----------------|--------------|---------------|
| 18 | San Francisco | 715,717 | 870,014 | 154,297 | -6.30% |
| 13 | San Jose | 930,862 | 1,010,908 | 80,046 | -2.71% |
| 184 | Sunnyvale | 145,302 | 155,860 | 10,558 | -2.31% |
| 170 | Hayward | 153,160 | 163,269 | 10,109 | -2.11% |
| 267 | Berkeley | 112,643 | 119,463 | 6,820 | -1.94% |
| 103 | Fremont | 219,419 | 231,673 | 12,254 | -1.80% |
| 45 | Oakland | 422,994 | 439,341 | 16,347 | -1.26% |
| 231 | Concord | 121,899 | 125,176 | 3,277 | -0.88% |
| 230 | Vallejo | 123,001 | 125,839 | 2,838 | -0.76% |
| 258 | Richmond | 114,450 | 116,238 | 1,788 | -0.52% |
| 261 | Antioch | 113,884 | 115,252 | 1,368 | -0.40% |
| 222 | Santa Clara | 126,603 | 127,426 | 823 | -0.22% |
| 242 | Fairfield | 119,461 | 119,827 | 366 | -0.10% |



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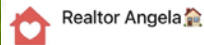
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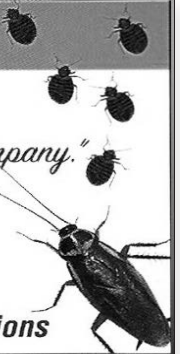
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