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Property Management Essentials Seminar page 27

North County

March 21, 2018

South County

March 29, 2018

Fair Housing Seminar April 26, 2018 page 28



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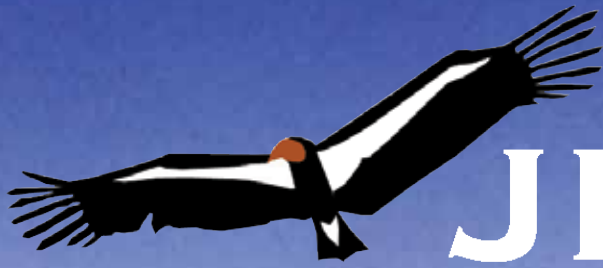
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CALENDAR

Property Management Seminar Santa Maria
Wednesday, March 21 • 9am-4pm
Property Management Seminar Santa Barbara
Thursday, March 29 • 9am-4pm
Fair Housing Seminar - Thursday, April 26, 2018

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new and returning members.

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ALERT

Affordable Housing Act (Proposed 2018 Ballot Initiative)

In addition to repealing Costa-Hawkins, the ballot initiative would allow local governments to adopt amendments, ordinances, or regulations to govern how much landlords can charge tenants for renting apartments and houses.

On October 23, 2017, the California Attorney General's office received a request for the title and summary for a ballot initiative entitled the Affordable Housing Act for the California November 2018 Ballot. Sponsors of the initiative included Michael Weinstein, President of the AIDS Healthcare Foundation; Elena Popp, Director of the Eviction Defense Network; and Christina Livingston, Director of the Alliance of Californians for Community Empowerment.

Upon receiving 25% of the necessary signatures, on December 27, 2017, the Secretary of State issued a title and summary for CISS #17-0041. Tenant advocacy groups are actively working to get the 365,880 signatures (5% of the total votes cast for Governor at the last gubernatorial election) needed to get the initiative on the ballot. This must occur at least 131 days (June 25, 2018) before the next general election (November 6, 2018).

Author: Robert Pinnegar, President & CEO, NAA

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SBRPA President's Message & CaIRHA/NAA Update

James Carrillo • CPM®, SBRPA President



Late winter and early spring are typically harbingers of new growth, revitalization and rejuvenation. Bulbs planted in late fall sprout, eagles lay their eggs; they hatch a little more than a month later, and by May fledglings are preparing to leave the nest. This year, rebirth and revitalization take on a new meaning as Montecito and Santa Barbara continue their recovery from the devastating disasters of December and January. While monumentally tragic, it is these occasions that bring out the very best in human nature.

As the new president of SBRPA this year, it is my honor and duty to bear witness to the amazing resilience of everyone affected by these events as we all move forward into 2018. I have been impressed by the many stories of courage and survival, and especially impressed by the efforts of some community members to help out others in need.

One shining example of that amazing effort is Abe Powell, a member of the Montecito Fire Protection District, who has spearheaded the effort now known as the "Bucket Brigade". What started out as a local effort to help neighbors dig out from the January 9, 2018, mudflows has now grown to teams of volunteers going neighborhood to neighborhood to help residents recover their homes and any personal property that can be found. During this process, mudslide victims tell their stories and begin the cathartic process that allows them to start all over again. As Powell tells it, "it is a spiritual and a physical project". Many thanks to Abe and his dedicated crew of volunteers. To find out how you can help in this effort, just search "bucket brigade Montecito" and click on any of the links that come up.

Early spring is also a busy time for SBRPA, the California Rental Housing Association (CaIRHA) and NAA. Locally, the Landlord / Tenant Task Force, of which Executive Director, Laura Bode was a member, was successful in helping craft a proposal to the City Council that saw two recommendations move forward to possibly become new City ordinances. The two recommendations included a requirement that landlords offer written leases to prospective residents and that landlords offer relo-

cation assistance when apartment complexes of 15 units or more displace residents for any reason. In the case of the task force, what is equally important is what did not move forward as a recommendation. Although highly sought after by the tenant side of the table, a "just cause" ordinance will not move forward at this time. In this area, Bode did an outstanding job presenting owners' sentiment that any "just cause" ordinance opens the door to rent control. We thank Laura for the hours and hours she worked on this initiative with the other task force members.

As you read this, NAA will be holding its annual "Lobby Day" now simply called **Advocate**. On March 13 and 14, 2018, members from associations around the country will gather in Washington, D.C. to meet with their respective congressional representatives to advocate on behalf of our industry. Currently scheduled to be voted on in the House of Representatives is H.R. 620, The Education and Reform Act of 2017. Passage of this bill will provide a business owner up to 120 days to cure an alleged ADA design defect prior to the initiation of a lawsuit. This will have a significant effect on curtailing so-called "drive-by" lawsuits, in which business owners must immediately respond to a lawsuit, usually resulting in settlement monies paid to the party that initiated the suit without the case ever going to trial. Passage of this bill will create a disincentive for complaints motivated solely for financial gain. This bill was one of NAA's talking points for our 2017 Lobby Day and we look forward to letting you know of the outcome of this vote.

Finally, in April, CaIRHA will head to Sacramento on the 10th and 11th to meet with Steve Carlson and Jonathan Arambel as we participate in our annual Legislative Day on behalf of our association and the other 10 associations that make up CaIRHA. You are already aware that AB 1506 (Bloom - Long Beach), the repeal of Costa Hawkins, died in committee in January. In addition to meeting with our local legislators, this meeting will give us the opportunity to determine how we will move forward in the event the repeal of Costa-Hawkins becomes a ballot initiative. More on that as we move forward.

Continued on page 23



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Finally, the constant threat to owner and landlord interests, especially here in California, has brought out in a very clear manner the need to continue to wage the most effective battle possible against the erosion of private property rights. One way that you can help in this battle is by contributing to our local Political Action Committee (PAC). These funds are used to support candidates and issues that will help preserve the ability of landowners and managers to maximize the value of their assets. For more information on how you can contribute to our PAC, feel free to contact Steve Battaglia at steve@battagliare.com or Laura Bode at laura@sbrpa.org.



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Mandatory Interior Apartment Inspection Program Discussed at Santa Maria Town Hall

In January 2018, the Santa Barbara Rental Property Association (SBRPA) held a town hall meeting in Santa Maria with rental property owners for a question and answer session regarding the City of Santa Maria Fire Department's new interior inspection program. The meeting was held at the Radisson Hotel near the Santa Maria Airport.

In 2017 the Fire Department rolled out a new program to inspect the interior of all 4+ unit apartment buildings in Santa Maria. The Fire Department has stated that the program is aimed at verifying and ensuring the existence and proper working condition of smoke alarms and that the inspections are mandated by the State of California to be completed annually.

SBRPA contacted the Fire Department back in late 2017 when we had members complain and express their concern that this program was too invasive and that it trampled on tenants' and property owners' Fourth Amendment right to privacy.

The main speaker for the event was Santa Maria Fire Marshal Darryl Delgado. He provided an outline of the inspection program, noting that the Fire Department intended to inspect all apartment buildings with four or more units. They plan to inspect these units once a year, and the fees for the inspections are \$43.50 for 4 to 15 units; \$57.60 for 15 to 30 units; and \$123.50 for 31+ units. Fire Marshal Delgado reiterated that the inspection program was mandated by state law but did not share details about which California State Civil Codes mandated the inspections.

In the question and answer session that followed the presentation, Delgado noted that larger complexes will not be entirely inspected in the same year. Instead, the Fire Department will request to enter only 10% of the units at larger properties, then, over the course of 10 years, they feel that they will have entered all the units at any given large complex. However, the fee will still be based

on the total number of units and not the number of units inspected.

He also mentioned that if a tenant did not want to allow the inspection, then the Fire Department would move on to the next unit. He went on to say that if a property owner did not want to give consent to the inspections or failed to respond to the request for inspection, then the Fire Department would simply schedule an exterior inspection (as they have done in years past). Then the property would receive a report from the exterior inspection along with the bill as though they conducted interior inspections.

At the conclusion of the meeting, representatives of SBRPA explained to the attendees that the association was having an attorney look into the legality of the inspections and would be pushing to have the topic of the Fire Department's inspection program brought before the City Council so that it could be discussed in a public forum. In SBRPA's prior discussions with the City Manager Jason Stilwell and City Councilmember Etta Waterfield, it appears that this inspection program was never brought before the City Council.

If you are interested in being notified by SBRPA when the inspection program is discussed at the Santa Maria City Council, please contact Angela at the SBRPA office at angela@sbrpa.org or 805.687.7007.

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With the increasing frequency of natural disasters such as fires, floods, and mudflows in our state and local community, it is as important as ever to be aware of the rights and responsibilities of landlord and tenant should the rental premises be impacted by the events. Most leases establish the procedures to be followed and the parties' respective obligations, and thus it is critical to review your leases to understand which terms control and identify potential gaps, if they do exist. Statutes and case law provide a backdrop that is often repeated through the terms of a lease or slightly modified thereby. We hope to provide you with a review of this backdrop in this article to assist with your lease review and decision-making going forward.

Lease Termination for Destruction of Premises

Apart from the terms agreed upon in the lease, the California Civil Code provides for the ability to terminate where the rental is totally or partially destroyed (Civ. Code, §§ 1932(2); 1933(4)). In the absence of a covenant by the landlord to repair or rebuild, the lease terminates, and the tenant is relieved of the obligation to pay rent when the entire leased premises are destroyed. When there is a partial destruction of the premises without the tenant's fault, the tenant may terminate the lease on notice to the landlord, if the part destroyed is a substantial portion of the premises, or if it is material to the tenant's use (Civ. Code, § 1932(2)). If the tenant exercises the option to terminate, the covenant to pay rent also terminates (Civ. Code, § 1932). However, advance payments of rent cannot be recovered unless the lease provided for an apportionment of rent (*Pedro v. Potter* (1926) 197 C 751).

Whether the premises are destroyed to a degree that triggers automatic termination of the leasehold is a question of fact for the trier of fact (see *Aguirre v. Lee* (1993) 20 Cal.App.4th 1646, 1655 (landlord's election to repair residential rental building damaged in Loma Prieta earthquake "alone provides sufficient evidence from which the jury could lawfully conclude that the earthquake did not destroy the building" (hence no termination of tenancy by destruction))). This can be a point of

contention between landlord and tenant, as often times a tenant with a year or more remaining on a high-value lease may see damage to the premises as an "out" and claim the damage entitles him to terminate. Factors affecting the determination would include the percentage of the property rendered unusable, the extent of damage, and length of time that a portion or all of the premises are unusable, as well whether the damage affected portions of the rental that are more critical to habitation, such as the bedroom or kitchen, as opposed to the attic or laundry room. When presented with a situation where a tenant claims the premises are destroyed to the extent the lease should terminate, the situation should be assessed with respect to the aforementioned factors.

The parties are free to provide in their lease for specific rights and obligations in the event of destruction of the rental property. For example, if the lease requires the landlord to rebuild or repair, the tenant is liable for rent so long as he or she remains in occupancy (*Knoblauch v. McKinney* (1935) 5 Cal.App.2d 339, 340-341). Likewise, the tenant may, under a provision in the lease, have an option to stand behind the lease and require the landlord to repair or rebuild. In such case, the landlord cannot compel a continuation of the tenancy if the tenant elects to terminate (*Alpern v. Mayfair Markets* (1953) 118 Cal.App.2d 541, 547).

A lease provision giving the landlord the right to cancel the lease in the event of destruction of the premises preempts the tenant's exercise of a right to stand behind the tenancy. Similarly, the tenant cannot cut off the landlord's agreed-upon right to cancel by attempting to exercise an option to renew or extend the tenancy term (*C.M. Staub Shoe Co. v. Byrne* (1915) 169 C 122, 126-130 (lease provided for termination if fire damaged premises and repair would take more than 60 days); *11382 Beach Partnership v. Libaw* (1999) 70 Cal.App.4th 212, 216-218 (lease giving either party right to terminate if fire destroyed premises within 2 years before expiration of tenancy term preempted tenant's exercise of option to renew)).

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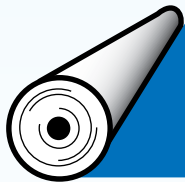
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Ordinarily, lease provisions are to be strictly construed to avoid forfeiture (Civ. Code, § 1442). This means that a judge would try to interpret and apply a lease provision narrowly, to avoid termination of a lease. However, the landlord's exercise of a right of cancellation in the event of destruction of the premises does *not* effect a forfeiture (*C.M. Staub Shoe Co. v. Byrne* (1915) 169 C. 122, 129). As a result, the termination provision would be read broadly and applied more liberally. Thus, it would be easier to terminate a lease under a damage to premises clause than other terms.

Uninhabitably under Civil Code section 1941

If the lease is not terminated after premises are destroyed, the landlord must act to restore them to a habitable condition, even if they had no part in causing the damage. Civil Code section 1941 requires that the lessor of a building intended for human occupation must deliver it in a condition fit for human habitation and repair all subsequent dilapidations that render it unfit for human occupation, except to the extent the lessee caused the dilapidation. A breach of this "warrant of habitability" would subject the landlord to liability for, among other items, rent paid for the period the premises were not habitable.

While the warrant of habitability is a commonly used doctrine to avoid payment of rent while rental premises are not habitable due to some physical issue, its application to evacuation situations is less clear. A tenant may claim that under the principles underlying the warrant of habitability, he should not be required to pay rent for the time period he was unable to live at the premises due to evacuation, regardless of any actual damage. He would argue that if a governmental authority requires that a property be evacuated, that not only has the practical effect of preventing him from using the premises, but it also provides evidence that the premises are not fit for human occupation.

On the other hand, landlords would argue that the purpose of the warrant of habitability is to obligate landlords to repair issues with premises that become unfit for habitation, not subject them to risk for decisions made by governmental entities. While the California courts have not specifically addressed this question, the general policy of the state favors tenants. Considering a landlord would have to repair rental premises if they were partially damaged by an act of God that rendered them uninhabitable (e.g. a broken window due to weather, damaged heating or utility connections due to lightning) and not charge the tenant rent for the period the premises lacked weatherproofing or heat, a

court would likely side with a tenant that objected to paying rent while evacuated. It is important to consider the foregoing when deciding whether to charge a tenant rent for a period he evacuated, despite a lack of damage to the premises.

As always, it is important to seek independent legal counsel as to your specific objectives and circumstances. If you have questions on these topics and/or need legal advice on these subjects, please call (805) 965-7746 or email David Groknerberger at David@rogerssheffield.com; Michael Brelje at Mike@rogerssheffield.com, or Scott Soulages at Ssoulages@rogerssheffield.com.



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Santa Barbara Mayor Murillo's City Council Seat to Remain Vacant until June Election

Prior to the Santa Barbara City Council changing in January 2018, the Santa Barbara City Council had planned to appoint a replacement to fill Cathy Murillo's empty District 3 seat. In anticipation of the scheduled appointment, several applicants showed up for interviews a week ahead of the appointment, but instead the Council voted 4-2 to have a special election on June 5, 2018. This effectively reversed the action of the previous council to fill the seat through the appointment process since doing so would be more economical. The special election is estimated to cost the City about \$30,000.

This reversal of the previous City Council's decision was particularly surprising since seats have historically been filled through appointment. The last time there was a vacancy on the City Council was in 2010, when now-First District County Supervisor Das Williams was elected to the California State Assembly, leaving his seat vacant. However, this was before district elections. Ever since the City of Santa Barbara settled the lawsuit to establish district elections, district election advocates have been active in trying to safeguard the new system.

Their vocal opposition, and more importantly the threat of another lawsuit, appears to have persuaded the City Council, despite precedent, support, and the previous Council's approval of an appointment process.

District 3, also known as the Westside neighborhood, is the largest majority-minority district in the City of Santa Barbara. Some are concerned that waiting until June will leave the Westside unrepresented until then. Despite overwhelming public support for a short-term appointment, the Council opted not to make an interim appointment to fill the seat in the meantime.

Without a seventh member on the Council until June, 3-3 deadlocked votes are likely to occur. The full extent of consequences of the City Council's capitulation to the will of the district election advocates is yet to be seen.

Santa Barbara County Supervisors Pass Marijuana Ordinances

In February, the Santa Barbara County Board of Supervisors passed cannabis ordinances 4-1 with Fourth District Supervisor Peter Adam casting the lone dissenting vote.

The controversial vote necessitated a seven-hour Board of Supervisors meeting with dozens of public comments. What has arisen from this process is several zoning and land use ordinances regulating marijuana cultivation along with a ballot measure that will be placed on the June 5 ballot. If passed, the measure will create a general tax on cultivation and retail sales of marijuana in the unincorporated areas of Santa Barbara County.

The ordinances will limit the number of potential retail pot shops to eight, with no more than two allowed in each supervisorial district. Outdoor cultivation was banned within 1,500 feet from residential zones, schools, day care centers or youth centers, and no cannabis businesses whatsoever are allowed within 750 feet of a school or "sensitive receptors." However, odor abatement plans for large outdoor grows on lots zoned in the AG-2 agricultural district were not included in the ordinances.

The failure to require odor abatement plans for large grows may have been caused by agricultural advocates who voiced concerns that overregulation could set a dangerous and harmful precedent for other agricultural operations.

What appears clear from the vote is that marijuana cultivation and retail sales are here to stay in Santa Barbara County. With Santa Barbara County already receiving the second-most temporary licenses issued by the State of California, the full extent of these marijuana operations in the County remains to be seen.

Downtown Santa Barbara Apartment Project Survives Appeal by Default

At the end of January, the Santa Barbara City Council deadlocked at 3-3 which, by default,

Continued on page 23

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allowed a 23-unit high-density project at 800 Santa Barbara Street to move forward, overcoming an appeal from preservationist groups who believe Santa Barbara must resist pressure to overbuild.

The project proposes demolishing an existing one-story office building next to the Anacapa School and replacing it with a 19,179-square-foot, three-story high-density apartment. The project is slated to include 8 studios, 10 one-bedroom units, and 5 two-bedroom units, plus 1,289 square feet of commercial space.

Even with an even-numbered Council, the decision to approve the project came as a surprise to many, with many on the Council being anti-development. However, what appeared to sway the Council into deadlocked approval was the fact that the developer had already received the go-ahead to build six condos on the site years ago and, according to the developer, he could go back to that plan if the current project was denied.

This approval by default has highlighted two current tensions with which Santa Barbara is currently dealing. First is the even-numbered Council that foreshadows many significant stalemates in the near future until an election can be held in June. The other is the seemingly age-old debate of whether high-density housing should be pursued on a more significant scale in Santa Barbara.

Proponents of high-density housing in Santa Barbara argue the importance of people being able to live and shop and work in the downtown area, and say projects such as this can reduce the number of people who have to commute to downtown.

California Lawmakers Want Businesses to Give Back Their Tax Savings

In response to the Federal Government's recent tax reform plan, which cut the federal corporate tax rate from 35% to 21%, two Democratic Assemblymen have introduced Assembly Constitutional Amendment 22 (ACA 22). If passed, ACA 22 would impose a tax surcharge of 10% on California corporations with net earnings over \$1 million.

Congressional Democrats have criticized the tax bill as disproportionately beneficial to the top 1 percent, but about 2 million workers have received bonuses since the bill's passing. California Assemblymen Kevin McCarty and Phil Ting have proposed ACA 22 to offset the savings larger businesses are set to reap, despite the state having sufficient tax revenue to maintain a \$13.5 billion reserve fund this year.

Luckily for California business, ACA 22 has little chance of winning the two-thirds vote necessary

to place it on the ballot. Nonetheless, this bill is something that California business should pay close attention to and consider vocalizing their opposition to make certain it does not pass.

Executive Director of Santa Barbara Downtown Organization Resigns

The Santa Barbara Downtown Organization is looking for a replacement for Maggie Campbell who had been its executive director since 2014.

The Downtown Organization has about 1,400 members and is responsible for promoting businesses in the downtown Santa Barbara corridor. Programs, activities and events sponsored by the Downtown Organization include the Downtown Holiday Parade, the Downtown LIVE Art & Wine Tour, the decorative State Street Flag Program, and First Thursday.

The Downtown Organization board will be appointing a search committee to look for a permanent replacement. In the meantime, former director and owner of Distinctive Framing 'N' Art store and gallery Dave Lombardi will serve as interim director.

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2236 South Broadway #E, Santa Maria, CA 93454
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South County Seminar

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Santa Barbara Association of Realtors
1415 Chapala St., Santa Barbara, CA 93101
Lunch included

AGENDA

- Screening applicants
- Beginning the relationship
- Rental Agreements – Rules & Regulations
- Resident Notices
- Terminating the Relationship
- Completing the Relationship
- New Laws

HIGHLIGHTS

- Fair Housing Practices
- Federal & CA Protected Classes
- Occupancy Standards
- Rental Criteria
- Companion/Support animals
- ADA Accommodations
- Hoarding
- Daycare Operation
- Medical Marijuana
- Legal Notices



James P. O'Neill, Esq. has practiced law for over 34 years, with all but one year in Santa Maria. His practice focuses on business, real estate, and estate planning and probate matters.

Jim holds a B.A. degree from San Diego State University and a J.D. degree from the University of San Diego School of Law. He is an active member of the State Bar of California and is also admitted to practice before the federal courts in the Central and Southern Districts of California and the Supreme Court of the United States.

In the community, Jim has served as an officer and director of various non-profit organizations, including the Santa Maria Valley Historical Society, the Santa Maria Police Council, the Santa Maria Philharmonic Society, VTC Enterprises, and the VTC Foundation. He has served on the City of Santa Maria's Landmark Committee and volunteers or does reduced-fee legal work for numerous other non-profit organizations.



Karen Mims currently serves as the Portfolio/Organizational Development Director, Residential Properties for The Towbes Group, Inc. where she oversees management of the multi-family housing communities in Carpinteria, Santa Barbara, and Goleta, California.

Prior to making Santa Barbara her home, Karen lived in Santa Monica, where she worked in property management for Riverstone Residential, TDC Properties and 10 years at Oakwood Worldwide. During her tenure at Oakwood, Karen served as Manager-International Standardization and Employee Development and was charged with creating and delivering training and development programs for lease-up and stabilized communities in England and throughout Asia.

While working full time, Karen earned a BS in Human Resource Management and an MS in Organizational Performance along with the designation of Certified Training Manager/Director from Langevin Learning Services and certifications in Myers-Briggs, Prosci Change Management, and DiSC. Karen currently sits on the boards of Girls Inc. of Greater Santa Barbara, and Unity Shoppe and enjoys volunteering with other local organizations.

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