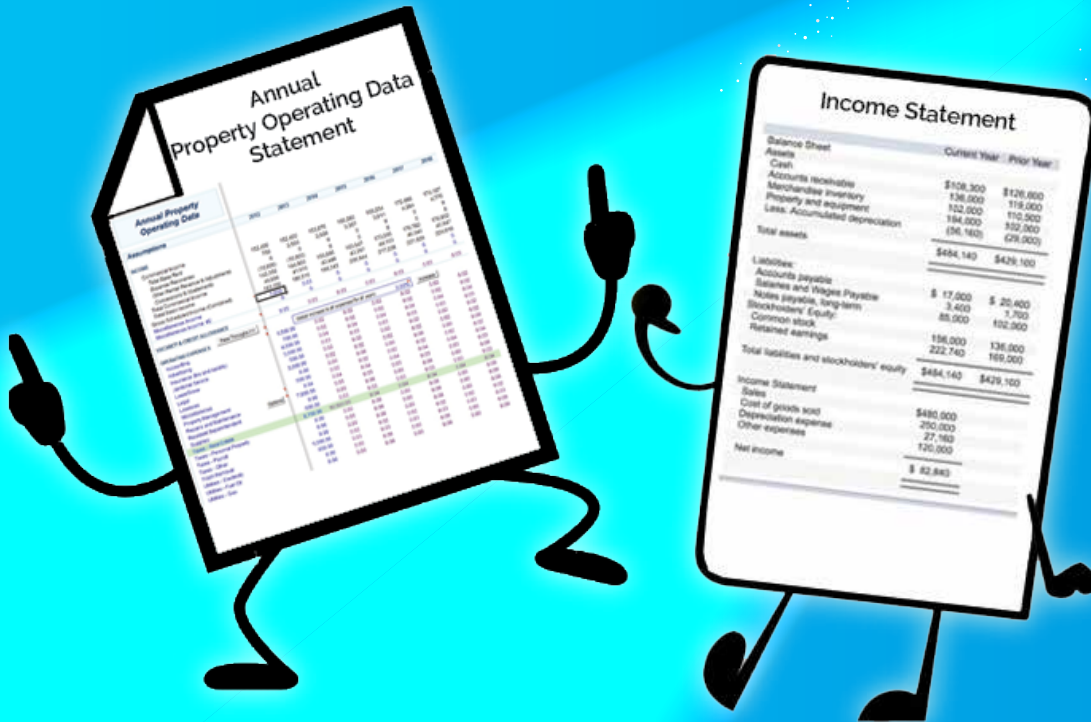
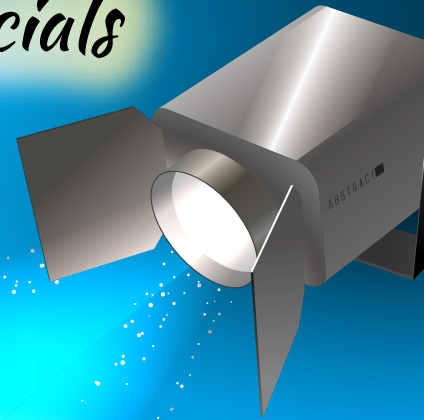


# SANTA BARBARA RENTAL PROPERTY news

CALIFORNIA'S CENTRAL COAST RESOURCE FOR RENTAL PROPERTY OWNERS, MANAGERS & SUPPLIERS

## *Presenting Your Apartment Financials in the Best Light*



Coffee with Counsel, July 5th ..... page 6  
Working Magic with Apartment Building Income & Expense Statements . . .page 11



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# SANTA BARBARA RENTAL PROPERTY news



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## SBRPA OFFICE

Mon-Fri • 9am-5pm  
Closed for lunch 12-1pm

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*The Rental Property News Magazine is published monthly by the Santa Barbara Rental Property Association, Inc. Editorial / advertising offices are located at 55 Hitchcock Way, Suite 110, Santa Barbara, CA 93105. Phone (805) 687-7007, Fax (805) 687-9708. Subscription is included in the annual membership dues.*

# A huge Thank You to Radisson Santa Maria **PROPERTY MANAGEMENT ESSENTIALS**

April 17, 2018



The Santa Maria Property Management Essentials Group



Instructors Jim O'Neill & Karen Mims



Nanette Mendez and Laura Watson



Steven & Gretchen Battaglia, Laura Bode, Heather & Robert Stricklin



Noreen Pond and Kathy Clenet



The Dinner Crowd



Julie Michaels & Steven Battaglia

# CALENDAR

**Thursday, June 7th 8:00 a.m.**

**FIRST THURSDAY SERIES: Coffee with Counsel**

*Moby Dick Restaurant on the Wharf*

Join us in reviving a favorite SBRPA tradition. An opportunity to meet other members for coffee on the first Thursday of every month at Moby Dick Restaurant on the wharf! In addition, each month we will feature a different special guest, who can informally counsel the group on issues we are facing.

We are reviving this monthly coffee meeting with one of Santa Barbara's favorite attorneys as our first special guest. If you wish, send questions you would like him to address in advance to [programs@sbrpa.org](mailto:programs@sbrpa.org). RSVPs preferred so we can ensure adequate seating, but feel free to just drop in. RSVP: [programs@sbrpa.org](mailto:programs@sbrpa.org)

**NOTE: The SBRPA Office will be closed on Fridays throughout the summer.**

**June 13-16**

**National 2018 Apartmentalize Conference**

*San Diego* <https://www.naahq.org/apartmentalize>

Join your fellow SBRPA members at The National Apartment Association's 2018 Apartmentalize conference! 9,500 attendees, 500 suppliers, solutions and services, and over 70 breakout education sessions in 16 key industry learning areas. As an SBRPA member, you have 3 great discount opportunities to choose from:

- **Group Buying.** Group buying discounts start as small as 5+.
- **California Discount Code.** Using the discount code California18, NAA will deduct \$125 off the current registration price for individual registrations.
- **Volunteer.** Volunteer for 3 hours and receive half off your registration! Contact [angela@sbrpa.org](mailto:angela@sbrpa.org)

**Thursday, July 5th 8:00 a.m.**

**FIRST THURSDAY SERIES: Coffee with Counsel**

*Moby Dick Restaurant on the Wharf*

RSVPs preferred so we can ensure adequate seating, but feel free to just drop in. RSVP: [programs@sbrpa.org](mailto:programs@sbrpa.org)

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SBRPA would like to recognize the following new and returning members.

Jane M. Barrett, Bruce Elyea  
Frank & Anja Erlach, Rae Guyer-Largura  
Janice Herndon, Holly Honarvar  
Carol Hinrichs, Miliford & Ronnea Patsler  
Tom Erasmus & Michelle Newby  
Karen Lockett, Dean & Jane Johnston  
Carol Mineau, Larry Robinson, James Nielsen  
Santa Maria Properties, INC.,  
William & Audrey Terry

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**FIRST THURSDAY  
"Coffee & Counsel"**  
July Meeting: 07/05/2018, 8:00 a.m.  
Moby Dick Restaurant on the Wharf

Join us in reviving a favorite SBRPA tradition; an opportunity to meet with other members on the first Thursday of every month at Moby Dick Restaurant on the wharf! Each month we will feature a different special guest speaker, who will informally counsel our group on issues we are facing. RSVPs preferred so we can ensure adequate seating, but feel free to just drop in.

RSVP: [programs@sbrpa.org](mailto:programs@sbrpa.org)

Photo: <https://mobydicksb.com>

**REMEMBER TO MARK YOUR CALENDARS AND JOIN US!**

# SBRPA President's Message & CaIRHA/NAA Update



James Carrillo • CPM®, SBRPA President

It goes without saying that we live in a beautiful part of the state on the central coast. Whether you live in San Luis Obispo, Pismo Beach, Santa Maria, the Santa Ynez Valley, Goleta, Santa Barbara or Carpinteria, the natural beauty of our environment can be intoxicating. The environment however, would not be complete without the people that make our communities such wonderful places to live.

Recently, I was honored to attend the ribbon cutting for the Gateway Beautification Project at La Cumbre Junior High School. This project, spearheaded by the La Cumbre Junior High Foundation, upgraded the exterior walkways, landscaping and patio area at the entrance to the recently renovated theatre at the school. Cliff Lambert is at the helm of the Foundation, and his Board, with the help of Paul Didier, has completed an outstanding project that will add to the beauty of the Westside. A testament to the dedication and loyalty of the Board of the Foundation is the fact that while all Board members have at some time in their life attended, been a parent at, or participated in events for La Cumbre Junior High, none currently lives on the Westside. This Board is a terrific example of community involvement for the betterment of the community—and not for a personal project. Congratulations to the La Cumbre Junior High Foundation and its dedication to the past, present and future children of the Westside. If you have not yet had the opportunity to do so, take a drive down Modoc Road and see this beautiful example of the work done by some of the folks who make our community a great place to live.

Now, to more somber news. It appears that tenant advocates have gathered enough signatures to place the repeal of Costa-Hawkins on the November ballot. If voters repeal this measure at the ballot box, Santa Barbara could be faced with even more extreme shortages of housing. It has been proven in cities that have rent control, that property owners are less inclined to make capital improvements

in their properties when an artificial cap has been imposed owners, which limits their ability to earn a return on their investment. This doesn't count the number of jobs lost by vendors who supply the property management industry. Plumbers, electricians, carpet installers and appliance providers will all see a downturn in their business. These are local jobs. These are mom and pop owners, not some Wall Street conglomerate. Thus, we will have a battle on our hands leading up to the November election. To make a donation to our local Political Action Committee (PAC) working on this important issue, please contact [angela@sbrpa.com](mailto:angela@sbrpa.com) or call at 805-687-7007. And stay tuned!

On June 13-16, 2018, property management professionals from around the country will descend on beautiful San Diego, CA for the annual NAA APARTMENTALIZE conference. Thursday's featured speaker will be Mike Rowe, Executive Producer and Host of "Dirty Jobs." On Friday, Alex Rodriguez, 2009 World Series Champion and founder of A-Rod Corp. will be the featured speaker. In addition, attendees will have their choice of over 60 informative and leading edge seminars and game changer presentations. If you haven't already registered for this unique and rewarding experience, there is still time. Just go online to [naahq.org](http://naahq.org).

## ARE YOU AN SBRPA MEMBER WITH QUESTIONS?

Consultation Hours: Mon-Fri 2:30-3:30pm  
For other times, please call to make an appointment:



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SBRPA Members can call with questions regarding areas of practice, and are billed at a "Preferred Client" rate if they decide to retain the firm for Landlord-Tenant matters.

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**Please RSVP by June 11, 2018**  
[ehalpin@sbnbcc.org](mailto:ehalpin@sbnbcc.org)

- |                        |   |
|------------------------|---|
| <b>11:30AM-12:00PM</b> | Networking and complimentary Lunch  |
| <b>12:00PM-1:00PM</b>  | Program and Q&A, with representative speakers from <b>New Beginnings Counseling Center, The Salvation Army</b> & participating local <b>landlords and tenants</b> |



# LEGENDARY INDIA & DUBAI

Join Members This February on an Ancient Journey



This February association members will come together for a tour across the fascinating and ancient country of India. Mark Twain said: *“India is the cradle of the human race, the birthplace of human speech, the mother of history, the grandmother of legend and the great-grandmother of tradition.”* Join fellow rental property owners as we set out to explore the highlights of this ancient continent. We will also go off-the-beaten path into the remote eastern regions of the country. This tour features land exploration as well as a week-long river cruise on the fascinating Brahmaputra River in the shadow of the Himalayas. We have even included a wonderful four night stop-over in Dubai on the way to India with touring in this spectacular city included. Below you can see some of the locations and highlights of this 27-day tour, which features everything from the Taj Mahal to a safari on elephant-back.

## UDAIPUR: THE “CITY OF LAKES”

- Stay in Beautiful Hotel Overlooking Lake Pichola, Famous for Lake Palaces
- Relaxing Boat Ride on the Lake at Sunset.
- Visit the stunning Jagdish Temple built in 1651
- Walk the Garden of Maidens & Lotus Pools / Explore Maharajah’s Palace
- Evening Scenic Dinner on the Mountain Overlooking the City

## DELHI: A CAPITAL BOTH OLD AND NEW

- Visit Sikh Gurdwara - “Sikh House of Worship”
- Experience “Old Delhi” and Narrow Alleys & Historic Sites
- Explore a Historic and Traditional Bazaar for Shopping
- Ride a Rickshaw into the Heart of Chandni Chowk (Silver Square)
- Visit the UNESCO site of Qutub Minar in the Plains of Delhi (c.1192)

## AGRA AND THE TAJ MAHAL

- Visit Village of Abhaneri & Marvel Chand Baori Step Well
- Explore the Itmad ud Daula, the Inspiration for the Taj
- Visit Mehtab Bagh Garden for Unique Taj Mahal View
- Dramatic Sunrise Visit to Legendary Taj Mahal (UNESCO)
- Visit the UNESCO Red Fort of Agra – Enjoy Mohabbat Taj Show

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- Dinner with a Noble Family to Learn About History & Culture

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# Working Magic with Apartment Building Income and Expense Statements



Brian Bailey

## Working Magic with Marketing!

Let's have some fun and talk about apartment building APODs! You know, Annual Property Operating Data statements. How will that be fun? Just wait! You'll learn how listing agents use these figures to create wonderful-looking GRMS<sup>1</sup> and cap. rates<sup>2</sup>. By magic and slight-of-hand, apartment expenses become 25% of gross operating income! Reserves and management fees disappear. Actual rent is replaced by proforma rent. Is proforma even a real word?

Why would someone do this? Do you remember your senior prom? You spent hours picking out what you would wear. If you didn't own something quite right you'd go out and buy or rent it! A clip-on was OK, or so I was told. You wanted to look your best because this was a special event, right?

A sale is a special event. You only get one chance to make a great first impression. OK, no more banal clichés. So, as the listing agent, you want to have the flyer, video, spreadsheet, background data and demographic overview present the property in the best possible light. On the numbers side you want the GRM as low as possible and the cap. rate as high as possible without losing all credibility – quite the balancing act! This is where the magic comes in!

Smart buyers and selling agents will look past the listing agent's glamorous presentation and drill down to the true picture of income and expenses. To do this, you need to have brokered hundreds of sales and reviewed hundreds of these statements like I have or read this handy-dandy cheat sheet!

## Working magic with income figures

Now, there aren't many things you can do with the current rents, right? Well, I've seen the APOD only reflect proforma rents with notations that the units are "currently rented to family members" or "month to month tenancies" or other dismissive language. I've seen current rents mentioned, but the analysis only comprehends proforma rents. OK; I've done this.

What about proforma rents? Is a rent survey included? Probably not. Usually, the proforma rents just appear in a column without any backup data. Doing a rent survey is drudge work. I hate doing it, but it is the most accurate way to estimate proforma rents. Good luck getting an unbiased rent survey in a listing agent's package. Do you want an

unbiased rent survey? Do the drudge work yourself or have your broker do it.

A local alternative would be to use the summary chart for the subject's sub-area in the *Dyer Sheehan Apartment Market Survey*<sup>3</sup>. suggestion – [www.rentometer.com](http://www.rentometer.com) to make your life easy! Sometimes I'll use these, but doing an actual rent survey yourself is best.

What about vacancy factor / credit losses? There is always down time between tenancies and collection issues are common. Does this line item reflect the real-world market? Think about it – if your average turnover is say 10 days of turnover work every two years you have an inherent 1.4% vacancy factor even if you rented the apartment on day one. If it took you say seven days to rent up on top of the turnover period, you have a 2.3% vacancy factor.

If the GOI<sup>4</sup> in the seller's books does not reflect the listing agent's APOD figures, ask why. Is the vacancy factor / collection loss factor higher? Were there evictions, excessive turnover or downtime?

## Working magic with expense figures

Now let's get to the real problem area in apartment building APODs – expense line items. Here's where creativity, inexperience, stupidity and little white lies go head to head!

I'll go in the order of the CCIM APOD<sup>5</sup>. Sorry, another acronym – CCIM – Certified Commercial Investment Member. This is a very prestigious, hard to obtain commercial real estate designation.

**Other Income:** This would be income from laundry machines, vending machines, parking, etc. Sometimes a broker will "estimate" this as the books may be mysteriously unavailable when the APOD preparation deadline is imminent or the income is "off-books" as in unreported cash income.

**Real Estate Taxes:** This is another one of my favorites! Listing agents will commonly just project 1% of the list price. That's it right? Well, look at the current actual tax bill – available online in Santa Barbara county. You'll find a smorgasbord of additional fees and charges: vector management, flood control, improvement district fees, sewer fees, school bonds, park bonds, library bonds, James Bonds etc. Ever-inventive government loves to tack on additional items to the real estate tax bill to fund an expansive and rather impressive array

*Continued on page 21*

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of dozens of things that never seem to go away.

I break out the real estate taxes into two lines: the basic 1% charge based on the list price or analysis price and then everything else from the latest tax bill. Now some of these things will change, but I don't want to research each agency and their formulas. I have a life you know!

**Property Insurance:** Many people underinsure their properties intentionally or not. Insurance brokers will often quote building and contractor prices from statistical resources that lump Los Angeles and Santa Barbara together. You'll know from our gas prices and experiences with many local contractors that we are considered a "cornered market". That means, due to lack of competition, you pay more. Sorry, not sorry. So, an expected bid of \$150 PSF for construction costs jumps over the moon here, even for your modest Isla Vista mansion.

The solution: *Get a new insurance quote with real Santa Barbara area building costs or that offers guaranteed replacement.* Do I do this? Sometimes, but I tend to use whatever the seller provides unless it seems absurdly high or low. What me worry?

**Off site and on-site management:** If the seller is paying 6% for off-site management, why is the listing broker using 4%? It makes the bottom line look better that's why! If you own 200 units your fee will be less. If its one smaller building then you're gonna pay retail!

My favorite egregious line-item fudge is to have the listing broker not include any off-site management, just payments to an on-site "manager" as a slight rent discount. Just stop it! There are specific formulas to recompense a resident manager spelled out in California real estate law including apartment discounts. Learn what they are and use them.

**Payroll:** What? Yes; in larger complexes you may have several employees involved in operations and they get paid! And yes, your resident manager and other employees need workers' comp. insurance, withholding and all the other items required for any employee. Don't think any of your onsite worker bees are "independent contractors". If they only regularly work for you they are employees and subject to all the wonderful benefits and red tape of employee management including the next two lines items – Expenses/Benefits and Taxes/Workers' Compensation. (Yes, the apostrophe is in the right place). Sometimes, these employees and related expenses disappear on an APOD. Maybe they're on vacation?

**Repairs and Maintenance:** This is a prime line-item ripe for abuse. The listing agent should just use actual maintenance expenses, right? This can be very misleading. Does the total represent a 12-month extrapolation of the past three months,

past 12 months, the past calendar year? Being "selective" in the base period may produce vastly different figures. Maybe there's an ongoing slab leak issue that occurred in March. Ouch! Well, if we start the 12-month period in April, problem solved!

I've seen this line item expressed as a percentage of GOI. I've also seen it as a price per unit allocation – my choice. I don't want to audit the maintenance expenditures and break out capitalized items. I could get carpal tunnel! I consult with Apartment Building Appraisers & Analysts, Inc. annual workbook for Southern California<sup>6</sup> to get a realistic estimate. This is a wonderful resource for apartment building expense guidelines.

**Utilities:** These are hard costs and are hard for your listing agent to fudge. (See how I did that!) However, it can be done. I've seen electricity and gas expenses at zero when I know there are house meters for these utilities for outside lights, laundry machines and "clean and show" costs.

Refuse is another shaky one. Is this line item just for refuse only or does it include the often-substantial charges for extra pickups and hauling related to gardening and landscaping? Sometimes the listing agent will drop any charges beyond the basic refuse pickup and forget to put the extras elsewhere even though the books reflect these charges.

A pet peeve of mine (and I have many) is when the listing agent simply lumps all utility expenses into one "utilities" line item. Request separate itemizations. You get extra points for double-checking with each utility provider.

Remember to check for a sewer expense since this may be included on the tax bill rather than as a separate utility billing. When this charge is on the tax bill the listing agent may have "forgotten" to include it and just put 1% as the new tax figure. Voilà; no more sewer charge !

Watch out for a dropped month in a 12-month analysis. The last charge may have been paid late. This becomes even more significant if the charge is paid every two months.

Also, watch out if the overall percentage of total utilities / GOI exceeds around 6%. This may indicate overcrowding, master-metering or a water leak.

**Accounting and Legal:** This line item is often omitted, but I know why. The owners accounting bill includes work for the subject property, but the bill is not separated out for the property. I usually assign some nominal number for this work as an estimate. Look for recurring legal expenses in the books as this may indicate systemic, negative tenancy issues like sloppy tenant screening.

**Licenses / Permits:** The City of Santa Barbara has an annual business license requirement for ev-

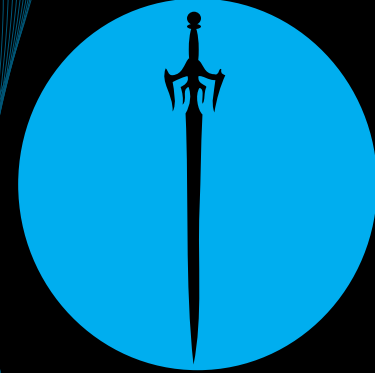
*Continued on page 15*

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ery apartment building based on income, yet this charge is seldom reflected in the listing agent's expense statement. It could be a nefarious omission or just ignorance. Frankly, I vote for the latter. It will usually be reflected on the owner's books as their interests are in maximizing expenses whereas the listing agent's interests are in minimizing expenses. View the application that includes how to calculate the amount in the city of Santa Barbara here - <https://goo.gl/dpKjex>

**Advertising:** The management company may bill this out separately or it may be buried in singage installation, promotion or somewhere else. If I don't see it, I put in a nominal expense.

**Supplies:** Most management companies will separate this from maintenance. I drop it and incorporate it into the price-per-unit maintenance estimate that I use.

**Contract Services:** This would be for landscaping, gardening, cable TV, Dish TV, internet, pest control, fire extinguisher maintenance, furnishings and anything that is an ongoing, contracted expense.

I usually see gardening grouped with landscaping. Some landscaping should be reflected in reserves because it may be a capital expense. Be sure that these line items reflect any extra hauling expenses or that these additional costs are reflected in the refuse line item or elsewhere.

**Reserves:** This is reserves for capital expense items, i.e. roofing, asphalt replacement, appliance replacement - any item that your accountant would tell you needs to be capitalized rather than expensed.

To obtain the most accurate reserves cost estimate, you would itemize each capital item, estimate remaining useful life and then provide for an annual sum that should be set aside for its eventual replacement. Some appraisers will do this, but I've never seen an agent do this. I don't do it. Sometimes it's estimated as a price per unit (my choice).

Now for some esoterica! Where should the reserves line item go? Sometimes it appears in expenses. Sometimes it appears below the expense total. Often it is entirely missing! The CCIM form places it below expenses and NOI. Appraisers have waffled back and forth on where to place this line item with the current norm appearing to be to include it in expenses.

Why is this important? If it's not included in expenses, the cap. rate will be higher. If the norm is for reserves to be included in expenses and the listing agent has put it below the NOI line, the cap. rate looks better, but it is misleading when trying to determine if the price is good compared to other opportunities or past sales. Learn what the norm is in your area so that you are comparing apples to apples. Remember, an apple a day...oh! I said I

wouldn't do that cliché thing again

**Wrap-up:** The real-world overall expense ratio on a typical, separately-metered local apartment building is going to be around a third to 40% of GOI. Sorry, but that's reality. If you see any substantial variation from this general rule look out! Something is askew or unique.

Master-metered and high-abuse properties feature higher expense percentages. A brand-new or entirely remodeled building will feature lower expenses.

So, there you have it! I hope that you are now more aware of how these line items can be, shall we say, "nudged". Remember, the APOD in the marketing flyer represents the property in its best possible light. What you want are just the true facts.

Brian Bailey is the broker-owner of Central Coast Investments. He is one of the leading multifamily brokers on the Central Coast covering Santa Barbara, Ventura and San Luis Obispo counties. He has a 39-year history of success and has been a member of the SBRPA since 1983.

(Endnotes)

- 1 GRM (Gross Rent Multiplier) – Sales price or value / annual scheduled GOI (Gross Operating Income) – The lower the better
- 2 Cap. rate (capitalization rate) – NOI (Net Operating Income) / sales price or value – the yield of the property without respect to debt – The higher the better
- 3 Santa Barbara County – South Coast Apartment Market Survey, Dyer Sheehan Group, Inc. (805) 653-8100, [www.dyersheehan.com](http://www.dyersheehan.com)
- 4 GOI Gross Operating Income – Gross income after vacancy and credit losses plus other income
- 5 CCIM APOD forms <https://goo.gl/n5xcW8>
- 6 Apartment Building Appraisers & Analysts, Inc. Joseph G. Queen 562-434-0571 [jgqueen@aol.com](mailto:jgqueen@aol.com)

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Instructor Janet M. Eastman, CPM



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The Fair Housing Seminar Class





# Fair Housing: Fixing a Mess of our own Making



Janet M. Eastman, CPM®

Why do we have Fair Housing, and where did it come from? We may all be familiar with the protected classes designated by fair housing laws. In fact, they may be so familiar that we just take them for granted. It is easy to forget how hard fought these basic anti-discrimination laws were, as well as the extensive time it took for them to truly take hold. In honor of Fair Housing month, we here take a look at that long and difficult history. What follows is a very brief and cursory overview of some of the reasons behind the need for the fair housing legislation and laws that have so shaped and which are so vital to rental housing practices today.

## The Root of the Problem

When a Dutch trading ship brought 20 Africans to the British colony of Jamestown, Virginia as indentured servants in 1619, the shameful practice of what would become slavery took hold in the new world and didn't end until 1865, when millions of African American slaves were freed by the Emancipation Proclamation at the end of the Civil War. In the intervening 250 years, an untold number of Africans were brought to the U.S. to help build the economic foundations that have made our country what it is today. As slaves they endured unspeakable treatment and were deprived of the most basic human rights.

President Lincoln's executive order on January 1, 1863, proclaiming the freedom of slaves in the ten states that were in rebellion, was actually only the beginning of the end of practice of slavery. The War ended on April 9, 1865, and in December of that year, the Thirteenth Amendment of the U.S. Constitution was adopted, outlawing slavery in the U.S. by stating that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

The Civil Rights Act of 1866 was enacted as a means to enforce the Thirteenth Amendment. The clause of the Act relating to housing discrimination

that can now be found at Title 42 U.S. Code § 1982 – (Property rights of citizens) reads "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The century that followed this first civil rights act is full of heartbreak and broken promises and not only an inability on the part of the government to end inequality but its active participation in and promotion of racial segregation. Black Codes and Jim Crow laws designed to restrict the rights and liberties of African Americans perpetuated their separate status in the South. Urban crowding and competition with waves of European immigrants for industrial work resulted in a less explicit atmosphere of racial segregation and discrimination in the northern cities to which millions of African Americans fled. Violent protest against racial discrimination began as early as 1919, and the struggle for racial equality proved to be our country's greatest challenge.

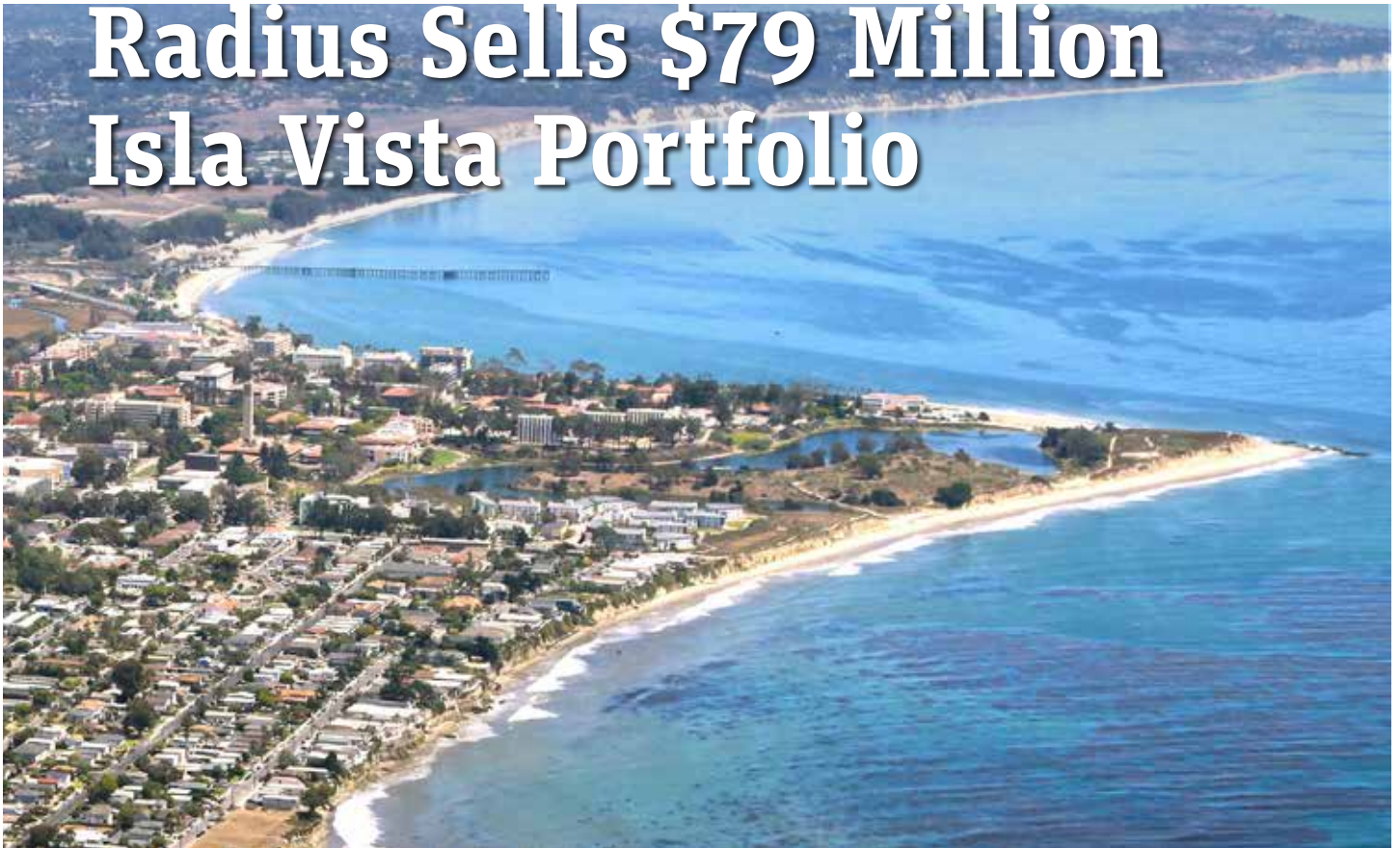
## Redlining

As part of President Roosevelt's "New Deal" efforts to pull the nation out of the Great Depression, and because of a need for banking and home loan reform in the 1930s, the Federal Housing Administration (FHA) was created in 1935 to regulate the rate of interest and the terms of mortgages that it insured. As part of this effort, the Federal Home Loan Bank Board (FHLBB) asked Home Owners' Loan Corporation (HOLC) to look at 239 cities and create "residential security maps" to indicate the level of security for real-estate investments in each surveyed city. Many minority neighborhoods in cities were outlined or shaded in red and labeled as risky for mortgage support and ineligible to receive financing. Thus was the practice of "redlining" born.

The maps were based on assumptions about the community, not assessments of the ability of the individuals or households there to satisfy standard lending criteria. Since African-Americans were un-

*Continued on page 19*

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welcome in white neighborhoods, which frequently instituted racially restrictive covenants to keep them out, the policy effectively meant that blacks—and at times Latinos, Asians, and Jews—could not secure mortgage loans at all. The assumptions in redlining unfortunately increased residential racial segregation and fostered urban decay.

Despite Supreme Court decisions in the 1940s and 1950s that ended the exclusion of minorities from certain sections of cities, race-based housing patterns continued into the 1960s, even as the Supreme Court ruled in favor of desegregation in other areas such as education and public transportation. Minorities who served in the armed forces had trouble renting or purchasing homes in certain residential areas because of their race or national origin, and many organizations lobbied for new fair housing legislation.

By the 1960s, civil rights activists cried out for countermeasures to undo the damage done by redlining and social policies of separate but equal that perpetuated inequality. With more and more frequent race rioting in major cities, where minorities had been forced to live in increasing numbers as white citizens fled to the suburbs, it became clear that something had to give. The need for fair housing measures became apparent.

#### Executive Order 11063

President Kennedy tried to address the problem with Executive Order 11063 on November 21, 1962, entitled “Equal Opportunity in Housing” that prohibited discrimination on the basis of race, color, religion and national origin in the sale, rental, or leasing of residential property and related facilities that are owned, operated, or financed in whole or in part by the federal government. This order also prohibited discrimination in the lending practices on loans insured or guaranteed by the federal government. The Order has since been amended to cover sex-based discrimination, and to protect families with children and people with disabilities, and in 1994 President Clinton signed Executive Order 12259, which strengthened the federal government’s commitment to fair housing.

#### Title VI of the Civil Rights Act of 1964

The Civil Rights Act of 1964 followed by outlawing discrimination on the basis of race, color, and national origin in any program or activity that receives federal assistance. It reads: “No person in the United States shall, on the grounds of race,

color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

#### HUD

In 1965 President Johnson, as part of his “Great Society” program to develop and execute policies on housing and metropolises, oversaw the creation of the U.S. Department of Housing and Urban Development (HUD) as a cabinet in the Executive branch, and the formerly created FHA became a part of HUD.

Johnson was dismayed at the failure of the government to pass fair housing legislation year after year, and the matter became a political hot potato. In desperation, he looked to a young senator from Minnesota named Walter Mondale to again sponsor a fair Housing bill in 1967. In part due to a tragic turn of historical events, Mondale succeeded where others had failed.

#### Federal Fair Housing Amendments Act (known as the Fair Housing Act “FHA”) of 1968

Intended as a follow up to the Civil Rights Act of 1964, Title VIII of the Civil Rights Act expanded the original goal of federal protection to address racial discrimination in housing. Title VIII was known as the Fair Housing Act (“FHA”), (which was later used as a shorthand description for the entire bill), and it prohibited discrimination concerning the sale, rental and financing of housing based on race, religion, national origin and sex.

Before its passage, Senator Edward Brooke of Massachusetts—the first African American ever to be elected to the Senate by popular vote—spoke personally of his return from World War II and inability to provide a home of his choice for his family because of his race. In early April 1968, the bill passed the Senate by a slim margin, thanks to the support of the Senate Republican leader, Everett Dirksen, who defeated a southern filibuster. It then went to the House of Representatives, from which it was expected to emerge significantly weakened.

On April 4—the day of the Senate vote—the civil rights leader Martin Luther King, Jr. was assassinated in Memphis, Tennessee. Amid a wave of emotion—including riots, burning and looting in more than 100 cities around the country—President Johnson increased pressure on Congress to pass the new civil

*Continued on page 21*



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rights legislation. King had participated in marches in Chicago in 1966 calling for open housing in that city and was associated with the fight for fair housing. Johnson argued that the bill would be a fitting testament to the man and his legacy, and he wanted it passed prior to King's funeral in Atlanta. After a limited debate, the House passed the Fair Housing Act on April 10, 1968, and President Johnson signed it into law the following day.

The last section of the Fair Housing Act prohibits the willful or attempted injury, intimidation of, or interference with any person who is selling, purchasing, renting, financing, occupying, contracting, or negotiating for the sale, purchase, rental, financing, occupying, contracting, or negotiating for the sale, purchase, rental, financing, or occupation of any housing, because of that person's race, color, religion, national origin, sex, disability, or familial status. This law also protects individuals who apply for or participate in any activity, service, organization, or facility that is in the business of selling or renting housing, as well as individuals who encourage others to participate in such activities and services. Those who break this law can be fined, imprisoned for up to one year or both. If bodily injury results from such unlawful acts, or if the acts involve the use or attempted use of a dangerous weapon, the prison sentence may be as long as ten years.

The Fair Housing Act covers almost every kind of housing, public and private. There are, however, several instances in which certain housing is exempt from the Fair Housing Act.

- Owner occupied housing with 4 or fewer units
- Single family houses sold or rented by an owner, as long as the owner doesn't own at least a part of more than three homes, has not sold a house in the last 24 months, does not use an agent or broker, and does not use discriminatory advertising.
- Religious organizations and private clubs are allowed to limit the sale, rental, or occupancy of their housing to individuals of the same religion or members or to give preference to such individuals, as long as membership is not limited to persons of a certain race, color, or national origin.

### Affirmative Furthering

With the passage of the Fair Housing Act, the newly

created department of Housing & Urban Development (HUD) was tasked with "affirmatively furthering" the cause of fair housing—a somewhat vague mandate. With the FHA now a part of HUD, the very institution that had created much of the mess in housing practices was now tasked with reversing the damage it had done, essentially fixing a mess of its own making.

In 1969, the newly elected president Richard Nixon appointed George Romney, the governor of Michigan and former mayor of Detroit, as the U. S. Secretary of HUD. Romney had studied the rioting and violence in his own and other cities to try to find the cause of the unrest. He concluded that it was in large part due to housing issues, and that the white man had created the ghetto and therefore must disassemble it. Romney used the mandate to "affirmatively further" fair housing to pressure predominantly white communities to build more affordable housing and end discriminatory zoning practices. He created an initiative he called "Open Communities" whereby he proposed withholding federal funding for water, sewer and highway projects from cities whose local policies fostered segregated housing.

The program began to take hold and see results, but constituents who had supported Richard Nixon complained, and when Nixon got wind of the Open Communities initiative, he shut it down and subsequently forced Romney out. While Nixon acknowledged the need to end racial segregation, he did not believe in forced integration.

For a brief time, at its inception, then, HUD did actively promote fair housing, but with Nixon's retreat, the cause lost momentum; and so the struggle for meaningful change in housing practices continued on in the decades after Fair Housing was born.

### Fair Housing Amendments Act of 1988

In 1988, Congress passed the Fair Housing Amendments Act, which expanded the law to prohibit discrimination in housing based on disability or on family status (pregnant women or the presence of children under 18). These amendments brought the enforcement of the Fair Housing Act even more squarely under the control of the U.S. Department of Housing and Urban Development (HUD), which sends complaints regarding housing discrimination to be investigated by its Office of Fair Housing and Equal Opportunity (FHEO).

*Continued on page 21*

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## Fair Housing Today

Since the turbulent civil rights battles and victories of the 1960s, the cause of fair housing has been furthered though the requirements for all in real estate related business to know and follow fair housing laws. The original intent to stop discrimination based on race has been and continues to be expanded to cover other classes of protected individuals. Fifty years after its passage, the Fair Housing Act remains a meaningful piece of legislation that brought into focus the need to fix the mistakes of the past. Despite the pitfalls they may regretfully present to rental property owners today, who must navigate ever narrower interpretations of them for greater numbers of protected classes, they were created for good reasons that must be remembered.

When faced with having to accommodate marijuana smokers and seemingly able individuals with "emotional support" animals, let us pause and think of how far we have come. Perhaps the pendulum has swung too far, but it is already beginning to swing back a bit, as Fair Housing Councils concede that many individuals took advantage of Fair Housing laws to pass off their pets as support animals. May

the pendulum continue to swing toward the point of reason in all areas; but may it never swing back to the terrible and unfair housing practices of our nation's past.

Let us remember the very valid reasons that Fair Housing laws were created, the long and valiant struggle for civil rights for everyone. This April, which is designated as Fair Housing Month in honor of the passage of the Fair Housing Act in that same month of 1968, let us also acknowledge and celebrate the success these guidelines have had in ending arbitrary and bad business practices that denied many from fully enjoying their rights as human beings, particularly with respect to housing.

Janet M. Eastman, CPM®

*The material for this article was gathered from various on-line sources, including, [www.wikipedia.com](http://www.wikipedia.com), [www.us.gov](http://www.us.gov), and [www.propublica.org](http://www.propublica.org). Recommended reading: Nikole Hannah Jones, "Living Apart: How the Government Betrayed a Landmark Civil Rights Law" ProPublica, Oct. 29, 2012.*

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# The Attorney's Corner

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## Landlord's Duty to Disclose in Rental Housing Transactions

### Part 2 – Statutory Duties of Disclosure

As a follow up to last month's article regarding a landlord's common law duties of disclosure, this month we will look at certain disclosures that are required by statute. While standard form leases may contain many of these required disclosures, a prudent landlord should nonetheless be familiar with what must be disclosed. Certain disclosures are required only based upon particular conditions and in specific situations, and thus familiarity with requirements can help prevent accidental or erroneous nondisclosure.

**Lead Paint.** One of the most commonly known disclosures relates to lead paint and is required by federal law. The requirement applies to dwelling units constructed before 1978 (including mobile homes on a permanent foundation), which involve FHA loans or HUD-owned property. The landlord must give to the tenant a pamphlet prepared by the Federal Department of Housing and Urban Development entitled "Protect Your Family from Lead in Your Home." (42 U.S.C.A. § 4852d; 15 U.S.C.A. § 2686). The pamphlet is available online through the Environmental Protection Agency's website. Prior to the tenant's ratification of a lease, the landlord must: (1) give a copy of the pamphlet to the tenant; (2) disclose all known lead-based paint and lead-based paint hazards in the property to the tenant and provide the tenant with all available reports; and (3) include a disclosure in specified statutory language as an attachment to the lease (42 U.S.C.A. § 4852d). The landlord also must sign a statement that the applicable requirements have been satisfied and retain the tenant's signed acknowledgement for three years (*Id.*) The landlord's agent is required to assure that: (1) the landlord is aware of his or her obligations; (2) the proper information is disclosed by the landlord to the tenant; and (3) the lease includes the proper dis-

closure statement and the proper signatures (24 C.F.R. Pt. 35). The agent is required to comply with the statute if the landlord fails to do so, but the agent is not liable if the landlord conceals or fails to disclose information (24 C.F.R. Pt. 35, § 35.94.) The lease may not be invalid if the landlord fails to comply with its requirements, but a person who violates the statute may be liable for treble damages and civil penalties (42 U.S.C.A. § 4852d(b)(1); 24 C.F.R. § 30.65).

**Explosive Ordnances.** A landlord of a rental property who has actual knowledge of any former federal or state ordnance location, identified as an area within one mile of a dwelling unit formerly used for military purposes that may contain potentially explosive munitions, must give written notice of its location to a prospective tenant prior to the execution of the rental agreement (Civ. Code, § 1940.7).

**Notice from Public Water Supplier.** A public supplier of water who is aware that the state standards for primary drinking water are not being complied with must notify all users of this fact and, within 10 days after receipt of the notice, the owner or operator of residential real property must notify the tenants. A landlord who fails to provide this notice is subject to civil liability not exceeding \$1,000 for each day that such notice has not been given (Health & Saf. Code, § 4028 (a), (g)).

**Asbestos.** An owner of a building constructed prior to 1979 who knows that the building contains asbestos-containing building construction materials must provide a notice to all tenants of the contents of any report conducted to determine the existence and location of asbestos, the location of any known asbestos, procedures for handling to prevent or minimize disturbance, release, and exposure to asbestos, and the potential health risks that may result from exposure to asbestos (Health & Saf. Code, §§ 25915, 25915.5, 25919.5) The notice requirements and tenant inspection rights are set forth in Health & Safety Code section 25915 et seq. Like lead paint, this is a serious disclosure, as an intentional failure to provide this information

*Continued on page 25*

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or providing false information is a misdemeanor (Health & Saf. Code, § 25919.7).

Death within Past Three Years. A landlord must disclose a death on the property that has occurred less than three years prior to the date that the tenant offers to lease or rent the property (Civ. Code, § 1710.2(a)).

Sex Offenders. Every lease or rental agreement for residential property must contain a statutory notice regarding registered sex offenders (Civ. Code, § 2079.10a, subd. (a).) The notice, as set forth in the statute, is adequate information regarding the state program of information regarding registered sex offenders and, upon delivery of the notice, a landlord or agent is not required to provide additional information.

Application to Demolish Building. Section 1940.6 of the Civil Code requires a landlord to disclose in writing to new tenants prior to entering into a lease (or to existing tenants) that the landlord has applied to any public agency for a permit to demolish the building and provide an estimated date when the demolition will occur as well as the approximate date when the landlord intends to terminate the tenancy. The penalty for noncompliance is a civil penalty not to exceed \$2,500, actual damages and moving expenses incurred by the tenant, and reasonable attorney fees for the prevailing party (*Id.*).

Methamphetamine Contamination. This disclosure is fortunately less applicable in Santa Barbara than many parts of the state. Under California law, local officials oversee the cleanup and notice of methamphetamine contamination to prospective renters and buyers of real property (Health & Saf. Code, §§ 25400 et seq.). Where a property has received a "cleanup order," the landlord must provide all prospective tenants who have completed a rental application with notice and a copy of the order, until the agency issuing the "cleanup order" has provided notice that no additional work is needed (*Id.* at § 25400.28). The prospective tenant must acknowledge, in writing, the receipt of the notice and pending order before signing a rental agreement (*Id.*). The notice must be attached to the rental agreement, and if the landlord does not comply with these requirements, the prospective tenant may void the rental agreement (*Id.*).

Disclosure of Pesticide Application without a Licensed Pest Control Operator. A landlord of residential property is required to provide its tenant with notice at least 24 hours prior to application of

pesticides without a licensed pest control operator, as well as to any tenant in an adjacent dwelling unit (Civ. Code, § 1940.8.5 and Civ. Code, § 4777.) Similarly, a landlord applying pesticide to a common area without a licensed pest control operator (with certain limited exceptions) must post a statutory written notice in a conspicuous place within the common area (Civ. Code, § 1940.8.5).

Plumbing Fixtures Compliance. By statute, all non-compliant plumbing fixtures in commercial and residential properties built prior to 1994 must be replaced with water-conserving fixtures (Civ. Code, § 1102.6.) Such compliance is required by January 1, 2017, for single-family residences and by January 1, 2019, for multi-family residential and commercial properties. Additionally, owners or landlords seeking to remodel on or after January 1, 2014, are required to replace noncompliant plumbing fixtures as a condition of receiving building permits. These requirements also apply to common area plumbing fixtures such as in restrooms and clubhouses. On and after these deadlines, sellers and transferors of all real property must disclose this requirement in writing, including whether the property has noncompliant plumbing fixtures (*Id.*).

While many of the foregoing disclosures are set forth in standard leases, you can see that there are some which only apply in certain circumstances, and thus may not be found in every form lease. Familiarity with the condition of the rental property and the required disclosures will help landlords avoid liability for nondisclosure. 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) 963-9721 or email David Grokenberger at [David@rogerssheffield.com](mailto:David@rogerssheffield.com); Michael Brelje at [Mike@rogerssheffield.com](mailto:Mike@rogerssheffield.com), or Scott Soulages at [Ssoulages@rogerssheffield.com](mailto:Ssoulages@rogerssheffield.com).



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# Santa Barbara Happenings

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## **Affordable Housing Act Threatens to Take the Cap Off of Rent Control Policies**

The Affordable Housing Act (“AHA”) is an initiative to repeal the Costa-Hawkins Rental Housing Act. Tenants’ rights activists announced in April 2018 that they had received enough signatures to get the AHA on the November 2018 ballot. The Costa-Hawkins Act is a decades-old state law that sets limits on the kind of rent control policies municipalities across the state are able to impose.

Backers of the repeal initiative gathered over 580,000 signatures, surpassing the 365,880 needed to get the proposed measure on the ballot. Santa Barbara County voters contributed nearly 7,600 signatures in support of the AHA.

The Central Coast Alliance United for a Sustainable Economy (CAUSE) is one of 122 organizations that have endorsed the voter initiative to repeal the Costa-Hawkins Act. CAUSE Policy Associate Frank Rodriguez, who was and is behind efforts seeking to have rent control re-established in Santa Barbara, has unsurprisingly spoken out in favor of the AHA.

If repealed, municipalities throughout California would no longer be capped on their ability to set limits on increases in rent.

The AHA has already gathered significant support, and it will take a united effort to defeat it in the upcoming November election.

## **Santa Barbara City Council Passes Accessory Dwelling Unit Ordinance**

On May 8, 2018, the Santa Barbara City Council voted unanimously in favor of adopting an ordinance regulating Accessory Dwelling Units (ADUs). Much of the ordinance mirrors state law, as required by the provisions of the California Government Code.

Despite many of the regulations in the ordinance being mandated by the State of California, the Council has struggled to adopt regulations in the few areas that the State permits it to impose its own requirements. On April 17, 2018, the Council

had a proposed ADU ordinance ready to be voted on. However, three of the five councilmembers (Dominguez, Hart, and Friedman) were opposed to the ordinance (the Council currently has six members; however, Councilmember Sneddon was forced to recuse herself due to a potential conflict of interest). The main contention that they had with the proposed ordinance was that it allowed ADUs in residential single-unit zones to be rented out after a period of ten-year owner occupancy. Because of this contention, those four councilmembers directed City of Santa Barbara staff to prepare an ordinance that would require permanent owner occupancy, of either the primary residence or ADU unit, for as long as the ADU exists on-site. However, this only applies to areas designated residential single-unit zones.

After this change was made, Councilmember Rouse and Mayor Murrillo decided to go along with the majority of the Council and approve the ordinance, despite their initial opposition to requiring permanent owner occupancy. This change of heart was needed, as five votes were required to pass the ordinance, which has been in the works since January 2017.

Some other notable aspects of the ADU ordinance include: banning ADUs in the extreme foothill High Fire Hazard Areas, changing the current open yard requirements for building an additional unit, and requiring that yellow signs indicating the proposed ADU be posted on-site within five calendar days after the initial application.

The ADU ordinance has been generally welcomed by the community, since it puts an end to the unknown of how the City would decide to regulate ADUs. This certainty is important, as the City has received 345 ADU applications since January 1, 2017, an exponential increase from the one ADU application it received in the 25 years prior.

## **Energy Commission Passes Rules that Require New Homes have Solar Panels**

In May 2018, the California Energy Commission

*Continued on page 29*

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unanimously approved rules requiring, in part, rooftop solar panels on new homes and multi-family residential buildings starting in 2020. Several California cities have already been mandating some solar power in new buildings, and New Jersey, Massachusetts and Washington, D.C. have also considered similar legislation, but soon California will become the first state in the nation to mandate all new homes be built with solar panels.

The Commission projects that more than 100,000 single-family homes and almost 50,000 multi-family buildings will be built across the state in 2020. Most single-family homes as well as multi-family residential buildings up to three stories, including condos and apartment complexes, will be subject to the requirement, which applies to building permits issued after January 1, 2020.

The new rules are expected to increase up front construction costs, but the legislature hopes that the savings generated by the decreased need for purchasing electricity will eventually offset this cost.

The rules now head to the state Building Standards Commission for approval.

### **Cannabis License Fees Authorized by Santa Barbara County Supervisors**

In May 2018, the Santa Barbara County Board of Supervisors authorized cannabis business license fees. The purpose of the fees is to reimburse departments for staff time spent on processing applications, issuing and renewing licenses, and completing compliance checks.

County Superiors voted 3-1-1, approving the proposed fee schedule. First District Supervisor Das Williams, Third District Supervisor Joan Hartmann, and Fifth District Supervisor Steve Lavagnino voted in favor of the motion. Fourth District Supervisor Peter Adam voted against the motion, and Second District Supervisor Janet Wolf abstained from the vote.

Earlier this year, County Supervisors approved a cannabis land-use ordinance and passed a cannabis business license ordinance.

County staff estimates the County will receive upwards of 150 business license applications in the upcoming year. Applicants will be charged for the hours worked by staff and will be required to pay a deposit based on the estimated costs that may accrue during the application process.

County department heads have agreed to hire full-time employees to handle the various steps in the licensing and permitting process, as well tax collection and law enforcement. Dianne Black, Director of Planning and Development, stated the Department was adding five new positions to handle the load.

### **City of Goleta Strikes Out on Appeal to Santa Barbara City Council Regarding Development Impact Fees**

The Santa Barbara City Council voted 6-0 on May 8, 2018, to deny the City of Goleta's appeal from the Santa Barbara City Planning Commission decision to approve a proposed auto dealership at 6290 Hollister Avenue. The proposed auto dealership is on land near the Santa Barbara Airport, which is owned by the City of Santa Barbara but is in the middle of the City of Goleta city limits.

The City of Goleta's main issue with the proposed auto dealership is that the City of Goleta will not be receiving development impact fees. It claims these fees are necessary to counteract the increased demand on City of Goleta roads that will be caused by the auto dealership. The Santa Barbara City Council did not buy into this concern and sent a strong message with its unanimous decision to deny the appeal.

The next step for the City of Goleta will be to file a Writ of Administrative Mandate with the Santa Barbara County Superior Court to challenge Santa Barbara's decision. This step is likely to be pursued, as the City of Goleta is claiming that the appropriate fee for the project would be \$2,044,930.00—which they are unlikely to walk away from.

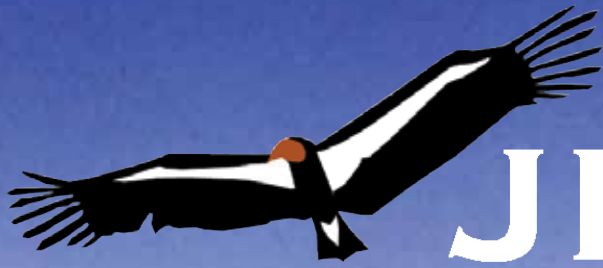
In the meantime, it remains to be seen how the cities will get along with one another during the probable litigation that will ensue.



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# Central Coast News



Derek Banducci, *Guest Author*

## Softness in the San Luis Obispo rental market

I own and operate a property management company that has been in San Luis Obispo for over 40 years.

The rental market is strange right now. We are receiving fewer applications than in recent years, and the applications we receive are often of lesser quality than we have come to expect. However, at the same time, we are achieving higher rents on certain units.

In San Luis Obispo, the volume of applications is down dramatically this year versus last year, but we are still receiving applications and successfully pre-leasing at about the same rate as in recent years. Our concern, though, is that the pipeline of applications will dry up and we may experience difficulty filling units as our list gets shorter.

In San Luis Obispo we also have a few vacant apartments that are sitting on the market without any interest, but that is likely due to the time of year and is not unusual, because vacancies outside of the summer months in San Luis Obispo are generally difficult to fill.

Despite all this, certain units have achieved far higher rents than we were expecting. For example, a three bedroom/two bathroom condominium near campus recently rented for \$3,500, which we thought would be a stretch, but we had multiple groups applying for the unit. So, for desirable units there is still strong demand. The market is just weaker in certain ways than we have seen in recent years.

In the Five Cities market, we are noticing a similar dynamic. Certain units have sat on the market longer than we expected, and then—once they were rented—we all of a sudden received several inquiries for no particular reason. We are also seeing less credit-worthy applicants than we have come to expect.

The strongest demand right now seems to be at the low-end and high-end of the market. Units that are priced between \$1,100 and \$2,500 seem to be sitting on the market longer than expected, with the possible exception of well-priced two bedroom units.

Finally, and mostly as an aside, the market in Grover Beach for commercial space is heavily impacted right now by the recent marijuana ordinance. None of the properties that we manage allows marijuana use, but we are seeing tenants who have been displaced from other properties move over to ones that we manage. This makes for strong commercial demand in that particular area.

In terms of overall strategy, our approach in the coming months will be to retain existing tenants by recommending against rent increases except in extraordinary circumstances.

To the extent that there is turnover, though, we will want to make sure that we achieve market rates from new tenants.

*Derek Banducci is the President of California-West, Inc., a real estate management company with offices in San Luis Obispo and Arroyo Grande. Derek is a real estate broker and attorney whose investing career began in 1997. California West has been managing investment real estate since 1975.*



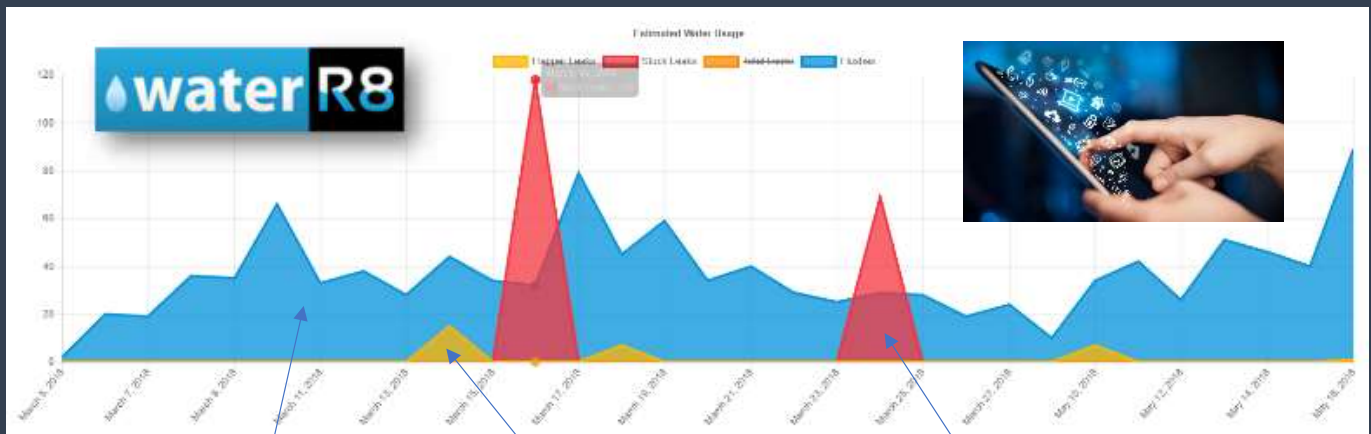
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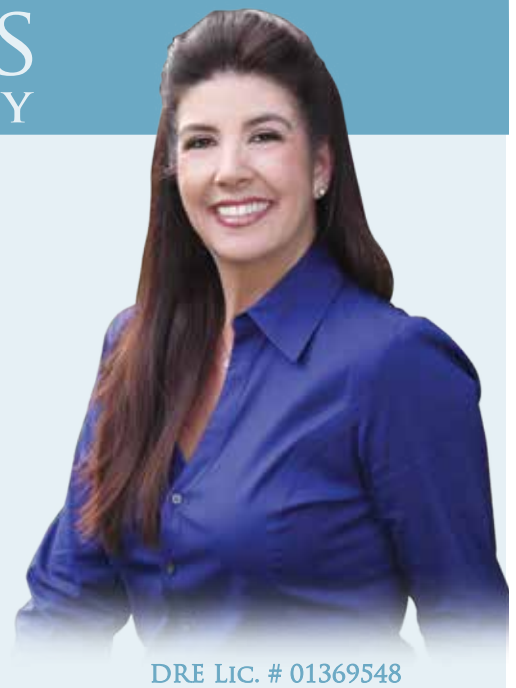
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