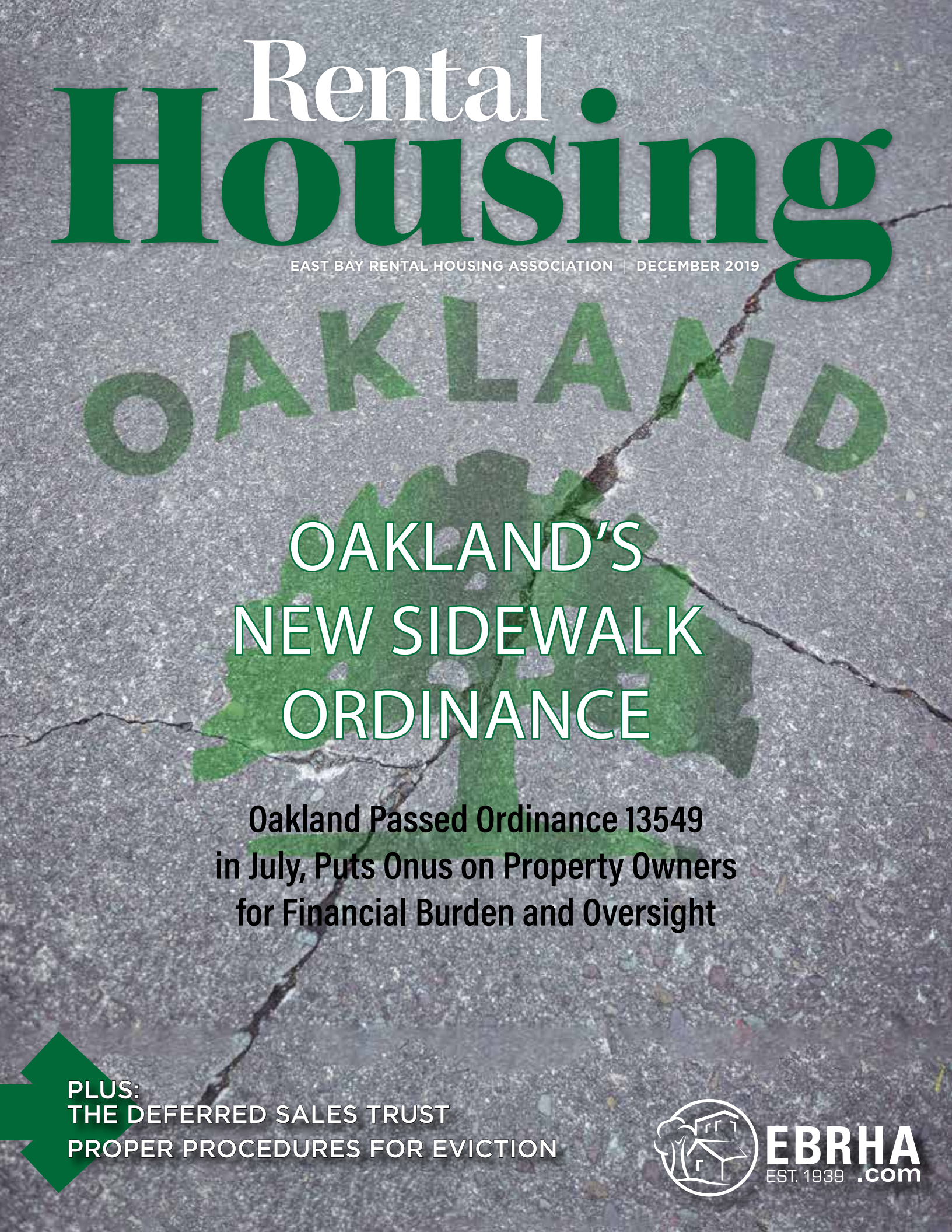
Rental Housing

EAST BAY RENTAL HOUSING ASSOCIATION | DECEMBER 2019



OAKLAND'S NEW SIDEWALK ORDINANCE

Oakland Passed Ordinance 13549 in July, Puts Onus on Property Owners for Financial Burden and Oversight

PLUS:
THE DEFERRED SALES TRUST
PROPER PROCEDURES FOR EVICTION

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East Bay Rental Housing Association

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13TH ANNUAL TRADE EXPO

Our 13th Annual Trade Expo was a great success, and we couldn't have done it without our sponsors, exhibitors, speakers, attendees and volunteers. Following up on the success of past year's events, we hosted a complimentary reception, with food drinks and a fabulous prize drawing. In addition to the fabulous food reception we also had a panel of seismic retrofit experts. Hundreds of attendees from throughout the Bay Area had the opportunity to network with vendors and other professionals, and get important election and advocacy updates. We wish to thank our moderator Nathan Durham Hammer, as well as the speakers Chanee Franklin Minor, Courtney Ruby, Ron Kingston and Wayne Rowland, Richard Phillips, John Yadegar, Homayoun Sikaroudi, Ami Bellomo and Larry Guillot.

We look forward to seeing even more members and rental owners at next year's Expo. And as always, a huge thank you to our generous sponsors and members.

Statewide Emergency: Greater than 10% rent increases prohibited in California

Diablo winds and widespread fires lead California Attorney General to proclaim a statewide emergency, with specifics on rental housing. California Governor Newsom and the Attorney General proclaimed a statewide emergency against what they referred to as "price gouging", which they defined as rent increases over 10%.

This rent control mandate applies to existing and prospective tenancies, meaning a property owner cannot set vacant unit rent at more than 10% over the previous rent, in other words, emergency vacancy control. Vacancy control contradicts existing state law if not for these emergency mandates. Also mandated are eviction restrictions where an owner cannot terminate a tenancy by raising rents above what would have been the allowable rent increase for the tenancy being terminated. The state of emergency is to last 30 days through November 26th, although Newsom can extend it.

When the state proclaims an emergency, Penal Code Section 396 kicks in and makes it illegal to increase prices of consumer goods and services, including rental housing, by more than 10% over pre-emergency levels.

There is questionable correlation between proclaiming this very clear emergency and mandating vacancy control. Most all Californians are appalled, and millions directly affected by the last three years' devastating fires, the tragic loss of life, and loss of shelter.
The Governor's emergency rental housing-related mandates may or may not ultimately protect fire victims who are already suffering, but should he extend the emergency through the end of 2019, the mandates would directly connect the signing of AB 1482 (which does uphold vacancy decontrol) with AB 1482's commencement as state law.

– NATHAN DURHAM-HAMMER

Fill in the Blank: Could TOPA be coming to your City?

East Bay Community Law Center along with the People's Land and Housing Coalition Bay Area, has submitted to Richmond, CA a proposed Tenant's Opportunity to Purchase Act ("TOPA"). Small property owners are referring to the measure as "Take Our Property Away". The ordinance would allow tenants to tie-up a property for up to 90 days before it can be sold by the owner to just any prospective buyer. The price could be determined by a City-trained appraiser. It seems well outside the scope of a municipality to dictate to whom and for how much a privately owned rental property may be sold. In fact, all tenants have the right to purchase without such a law, and may do so by submitting an offer to purchase. The proposed law has a fill-in-the-blank section at the top, as it is intended to spread into any city that might consider it.

Property owners have reacted vehemently in Richmond, and have filled the council chambers during a series of meetings. Here is the update from EBRHA's Community Relations Advisor, Georgia Richardson:

After attending a couple City Council meetings concerning TOPA, it is clear to me that, the residents of Richmond are very upset about this proposal. It is viewed as just one more attack that adversely affects small rental property owners. The residents of Richmond and other cities who stand in agreement with them have shown up in large numbers to speak in opposition to TOPA at the City Council public forums. Residents, largely rental property owners, are hoping that the City Council abandons the TOPA proposal.

Residents are encouraging City Council Members to at least establish a collaborative housing commission consisting of the community stakeholders to get input before moving forward or making decisions on legislation that is harmful to the residents of Richmond. What may be seen in theory by the City Council as another potential solution to our housing crisis, has created a lack of confidence by Richmond property owners in their elected officials and questions about who is behind the TOPA proposal. The Association of United Richmond Housing Providers (AURHP) is the driving force behind the opposition to TOPA and don't show any signs of backing off!!

– NATHAN DURHAM-HAMMER

OAKLAND'S NEW SIDEWALK ORDINANCE

Oakland Passed Ordinance 13549 in July, Puts Onus on Property Owners for Financial Burden and Oversight

BY R. STEVEN PINZA

Oakland has long been a place with streets and sidewalks in need of repair due to natural settling, tree roots, and earthquakes. As you can imagine, thousands of properties, including a very large number of multifamily properties will need to make repairs in order to comply with Oakland's Ordinance Number 13549 (hereinafter "Sidewalk Ordinance").

Why is Oakland Adopting Such an Ordinance?

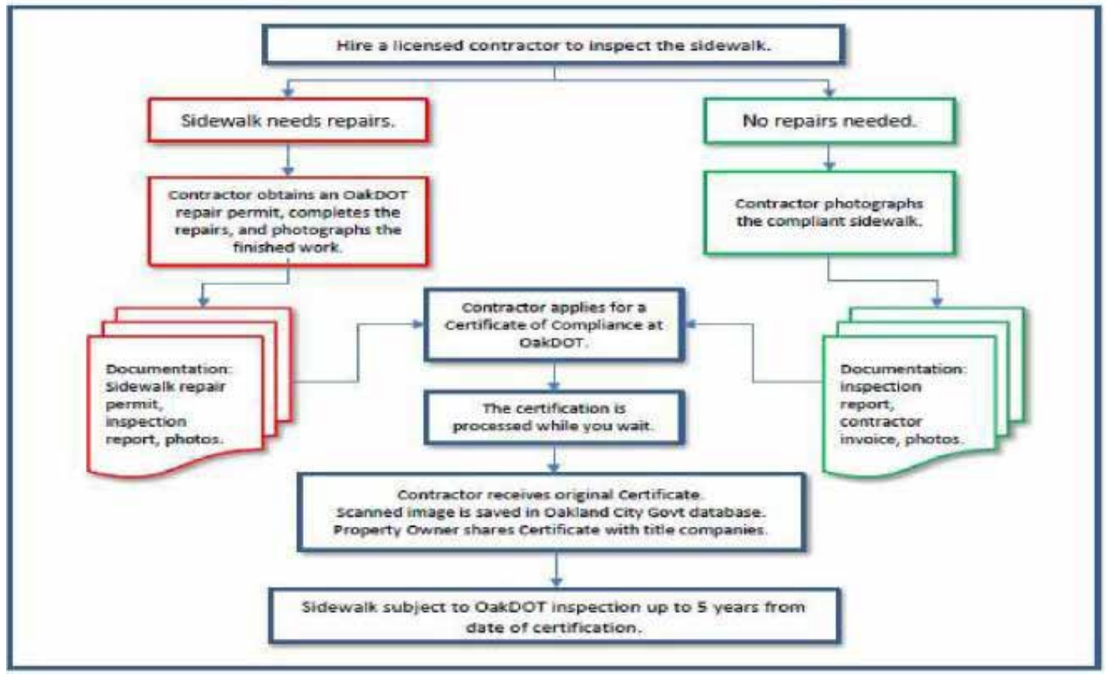
According to Oakland's City Administrator, Sabrina Landreth, "Currently, the Department of Transportation (OakDOT) has more than 3,700 open sidewalk repair tickets. Approximately 25% of all sidewalk damage service requests were made more than five years ago. Each service request represents a potential accessibility challenge for Oaklanders in wheelchairs, with strollers, and who use a mobility device, such as a walker. Each of these open sidewalk damage reports also represents constructive notice of potential trip hazards. Sidewalk cracks, lifts, and upheavals can lead to injuries. These injuries result in dozens of claims and lawsuits every year. Finally, each of these open tickets can be understood as a proxy for additional areas of damage that have gone unreported. Sidewalk damage presents barriers, potential injuries, and potential liabilities for both the City and Oakland property owners. Although by state law private property owners are responsible for private sidewalk repairs and may be liable for any injuries resulting from sidewalk defects, California courts have held that the City is and can be held liable for injuries as a result of private sidewalk damage if the City has not adopted a sidewalk liability ordinance".

Oakland's Sidewalk Ordinance mitigates the City's risks and costs by transferring the financial and administrative responsibility to property owners. The Sidewalk Ordinance forces property owners to be responsible and liable for all sidewalk safety and maintenance, including any crack, depression, or vertical offset of more than ¼ of an inch, all of which are considered a defect.

How Does the Process Work?

The process for obtaining a Sidewalk Ordinance certificate is much like the private sewer lateral ordinance that Oakland imposes on property owners. Virtually all property owners who are selling, buying, or doing a renovation above $100,000, must obtain a Sidewalk Ordinance certificate. Even a property owner that does not have a sidewalk in front of their property must obtain a no-fee exemption from the Oakland Department of Transportation.

To begin the process of obtaining a certificate, an owner must first hire a licensed contractor to inspect the sidewalk. The self-



certification inspection must be conducted by a contractor holding an A, B, or C-8 license, and a current valid Oakland Business License. This means that even if you, a friend or family member has a contractor's license, that person must also have a city of Oakland business license.

If there are not any repairs needed, the contractor must photograph the sidewalks in such a way that it shows that the sidewalks are sufficient. Afterward, the contractor needs to submit these photographs along with an inspector report, an invoice for the inspection, and any other documentation deemed necessary to the Oakland Department of Transportation.

If there are repairs needed, the contractor (after inspecting the sidewalks) must obtain a permit, complete the repairs, and photograph the work. That contractor then submits the photographs, inspection report, invoice, and finalized permit to the Department of Transportation.

In both scenarios, the contractor applies for a certificate of compliance with the Oakland Department of Transportation, and the certificate is processed immediately. The contractor then receives a physical certificate, and an electronic certificate is kept in the city database for the future. The sidewalk inspection is good for five years from the date of certification, unlike the 20+ years generally given for a sewer lateral certificate given by East Bay MUD.

Who Pays for Compliance?

There are some exemptions, including but not limited to transfers between co-owners, in trusts, between spouses, etc., the vast majority of the time the property owner will bear a cost to comply with the ordinance. While the City of Oakland created a "sidewalk repair hardship program," which eliminates costs for many property owners, it is unlikely to benefit multifamily property owners since it creates financial requirements and/or limitations in order to qualify for any cost savings.

In many situations, roots from a large tree will push up the sidewalk, creating a repair that needs to be rectified under the Sidewalk Ordinance. In some of these situations, the tree may be under the care of the City of Oakland. To be sure, you must contact the City of Oakland to determine if it is a city tree that is causing or caused the damage. Any repairs needed as a result of a city tree will be performed and paid for by the City of Oakland.

If you are not exempt, and there is not a city tree causing the damage, then the cost of compliance is left to the property owner. However, responsibility for the Sidewalk Ordinance can be negotiated if agreed upon by both parties. The Pinza Group sold or is in the process of selling, nine different multifamily properties in Oakland since this ordinance passed in July. In these transactions, the Pinza Group imposed many different solutions, which facilitated compliance in a mutually beneficial way for both the Buyer and Seller.

First, a Seller may want to obtain compliance before going to the market or into escrow. This will hide any "surprises" that could come up during the due diligence period in escrow, and therefore limit any hiccups during escrow. By providing the certificate of compliance before going to market or into escrow, it narrows the issues that inevitably come up during any escrow process.

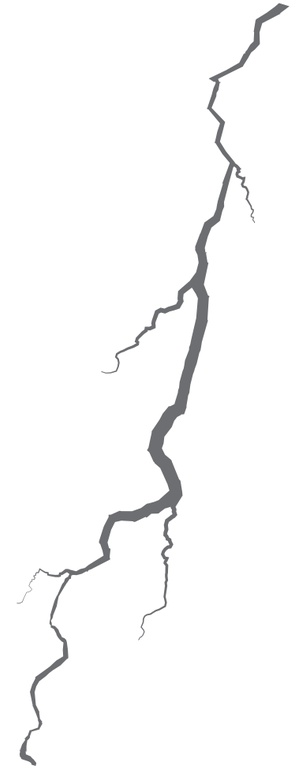
Second, a Seller may want to credit the Buyer a certain amount to allow the Buyer to obtain the certificate of compliance. For example, the Seller may assume, and the Buyer may agree, that the cost to comply with the ordinance is $2,500. As such, that Seller may find it easier to credit the Buyer the $2,500 cost.

Third, a Buyer and Seller may want to split the cost. For example, we recently included the language "Buyer shall be responsible for obtaining a Sidewalk Ordinance Certificate from the City of Oakland. Buyer and Seller further agree to equally split all costs necessary to obtain Sidewalk Ordinance Certificate from the City of Oakland."

Fourth, if a Buyer or Seller cannot obtain a certificate of compliance before title transfer, the Buyer/Seller may apply for a provisional sidewalk compliance certificate, which allows for a 90-day extension from the issue date for the work to be completed. This certificate must be issued prior to the title transfer. During this 90-day period, either the Buyer or Seller must complete the requirements to obtain a full sidewalk compliance certificate by following the process above.

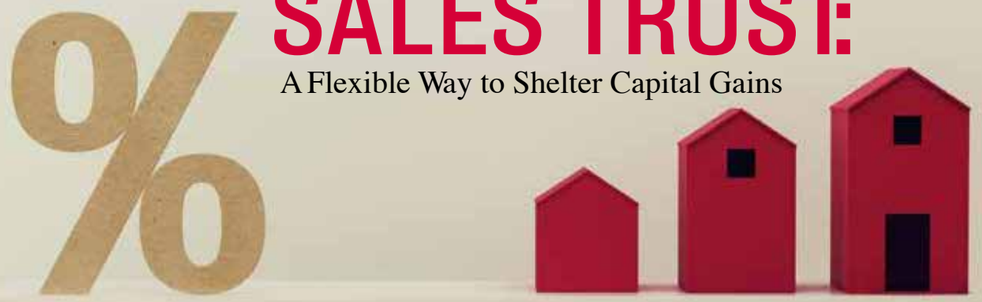
In summary, the City of Oakland will continue to apply new ordinances, costs, fees, and responsibilities to multifamily owners for the foreseeable future. While certainly the end result is necessary (fixed sidewalks, a new sewer lateral, etc.), the means to achieve that end is what is questionable. I predict that this is one of many more ordinances we will see implemented not only in Oakland, but throughout the greater East Bay, and a property owners need to be prepared, both strategically and financially, to comply with these ordinances.

Steven Pinza is a licensed California Real Estate Broker, Attorney, and President of The Pinza Group, an investment real estate brokerage in the East Bay, and the top multifamily real estate brokerage in the East Bay since 2014 according to CoStar. In addition to real estate brokerage, The Pinza Group also provides no-cost legal and landlord strategic advice to all multifamily landlords and investors.



THE DEFERRED SALES TRUST:

A Flexible Way to Shelter Capital Gains



BY R. STEVEN WILKINSON, MBA

Since March of 2009 the American economy has been on an economic upswing. Most pundits fear we soon may be due for a recession. If so, each individual should review their finances and their assets to determine if additional liquidity or diversification makes sense.

Owners of businesses, real estate, and other highly appreciated assets are often reluctant to sell due to the significant capital gains tax liability that can result. An option to avoid taxation is the Estate Planning Team's Deferred Sales TrustTM ("DST") offers an attractive and flexible tax deferral alternative to a 1031 Exchange, which can dramatically decrease or eliminate the capital gains taxes that would otherwise be recognized in the year of the sale.

Rather than experiencing the debilitating drain of equity that results from a fully taxable sale, the DST permits the seller to generate a potentially higher rate of return by leveraging the pre-tax proceeds from the sale, which can be significantly greater.

The DST is a type of Internal Revenue Code(IRC) Section 453 installment sale, also known as a "seller carry-back" sale. Under this code section, the seller can achieve significant tax deferral benefits by not receiving actual or constructive receipt of the proceeds at the time of the sale, instead receiving payments made to them over time. Moreover, the Deferred Sales TrustTM has greater flexibility than a conventional installment sale with respect to investment selection, risk management and the repayment timeframe.

The process starts with a detailed consultation with one of The Estate Planning Team's specialized tax attorneys who will gather appropriate details of the transaction to determine if it is suitable for structuring as a DST, as well as what the potential benefits would be to the taxpayer. Then, if the transaction meets the requirements for a DST, and sufficient benefits can be obtained for the taxpayer, a conditional engagement agreement is offered to the taxpayer by the tax law firm. This engagement requires no upfront retainer and does not obligate the taxpayer to pay for any services unless, and until, the closing of the sale of the appreciated asset and a decision by the taxpayer to proceed with the funding of the trust.

When the taxpayer decides to proceed, the ownership of their highly appreciated capital asset is transferred to a dedicated trust, set up solely for the taxpayer's own transaction. The trust then sells the asset to the buyer at the higher cost basis that was just established in the prior transfer from the seller to the trust.

As a result, there is likely no capital gains tax immediately owing from the initial transfer to the trust because of Section 453, and no capital gains tax liability from the sale from the trust to the buyer because there is no capital gain.

By utilizing the DST structure, the seller of the property becomes a note-holder (creditor) and the trust makes the agreed upon payments to the note-holder, pursuant to a payment agreement called an "installment sales contract." Under this contract, the trust is obligated to make installment payments to the note-holder (seller), representing interest on the pre-tax proceeds or principal from the sale, or both. If the note-holder (seller) has other income and doesn't need the payments right away, they may elect to defer the start date of the note payments. The tax code does not require payment of the capital gains tax until the seller starts receiving payments of principal. The capital gains tax that will be recognized and paid to the IRS and the State is only that portion of the overall capital gains due from the taxpayer's sale to the trust, based upon the proportion of principal repayment established in the terms of the installment agreement.

The note payments and the capital gains tax deferral effect from the DST will continue to the next generation upon the demise of the seller. With additional planning by the tax attorneys, the proceeds from the sale can be entirely removed from the seller's taxable estate.

Primary Benefits of the Deferred Sales TrustTM Tax Deferral: When appreciated assets are sold, tax of the gain is deferred until the seller receives payments of the principal. Opting to receive future payments in lieu of an immediate lump sum delays the recognition of capital gains, thereby enabling the taxpayer to enjoy the benefit of the pretax prices for an extended period. Managing the amount and frequency of principal distributions can also enable the seller to benefit from lower marginal tax rates for the years in which the gains are recognized. The DST can defer capital gains taxes on the sale of almost any type of highly appreciated asset including: businesses & professional practices, commercial real estate, investment properties, high end primary residences, major stock positions, and very valuable artwork and collectibles, among other things.

Flexible Payment Options:
The repayment terms and schedule can be structured in a variety of ways to best serve the needs of each specific taxpayer. This includes anything from minimal repayment of principal or rapid amortization. In addition, the commencement of payments can be immediate or can be delayed into the future.

Liquidity and Diversification:
Can potentially convert an illiquid asset, like a business or commercial real estate, into a diversified portfolio of liquid investments. This can help reduce risk and vitality by preventing overexposure to a single asset class.

Enhanced Retirement Income:
Can provide a stream of income for retirement based on the pre-tax proceeds from the sale instead of the after-tax proceeds, which are likely to be substantially less.

Maintains Family Wealth:
Helps to maintain wealth in the family in a umber of ways. First, by avoiding a massive drain of equity at the time of the sale, resulting from the immediate recognition of the full capital gains tax liability at the highest rates. Second, by potentially providing significant estate planning benefits. And finally, the DST can provide estate liquidity so that significant assets of the family do not have to be liquidated under less than ideal circumstances.

Estate Tax Benefits:
The DST can be combined with additional planning to accomplish an estate freeze for estate tax purposes, and potential, and potentially remove the proceeds of the sale from the seller's taxable estate, potentially beyond the amounts exempted by the unified credit. Further, the ability to select the state in which to domicile the trust can provide additional tax savings.

A 1031 Exchange alternative or rescue

Unlike a 1031 Exchange, the proceeds from the sale do not have to be invited in "like kind" property in a ver short timeframe to achieve tax deferral. Moreover, a DST can be used to rescue a 1031 Exchange that is danger of failing, subject tot the 1031 exchange being appropriately set up with a DST certified QI ("qualified intermediary").

Can sever partnership interests:
When a partnership or other ownership group sells an appreciated asset, they do need to remain together to achieve tax deferral, as is typically the case with a 1031 Exchange. Each individual owner can have their own deferred Sales TrustTM, the assets of which can be managed to each taxpayer's own individual risk tolerance and preferences.

Asset protection:
Subject to State specific laws, and in conjunction with additional planning, the taxpayer can secure asset protection by utilizing the DST.

Probate Avoidance:
With additional planning, the DST can help avoid the delays and expense of probate.

Hypothetical Scenarios

Commercial Property sale in NYC

Sales proceeds after
commissions and closing costs $20,000,000
Seller's Original Basis: $5,000,000
Capital Improvements: $1,000,000
Depreciation: $4,000,000
Mortgage Balance at time of closing: $2,000,000
Seller's adjusted basis : $2,000,000
(purchase price + capital improvements - depreciation)
Taxable gain: $18,000,000
(net sales proceeds minus adjusted basis)
Federal Tax 20-25% - Unrecaptured section 1250 gain applies
NY State & City Tax 12.7%
Medicare Tax 3.8%
Approximate Tax Due: $6,770,000
Approximate Tax Due with a
Deferred Sales TrustTM:..... $0

Business in Chicago

Sales proceeds after
commissions and closing costs: $10,000,000
Seller's Original Basis: $0
Business Loan balance at time of closing: $250,000
Taxable gain $10,000,000
(net sales proceeds minus adjusted basis)
Federal Tax 20%,
Illinois State Tax 4.95%
Medicare Tax 3.8% (doesn't apply to this situation)

Approximate Tax Due: $2,495,000
Approximate Tax Due with a Deferred Sales TrustTM
with Mortgage Over Basis (MOB): $62,375
*Mortgage Over Basis (MOB) is taxable = $250k is
non-deferrable.

Primary Residence in Los Angeles

Mr. and Mrs. Taxpayer want to sell the highly appreciated residential property in California that they have lived in for ten years:
Sales proceeds after
commissions and closing costs: $4,000,000
Seller's Original Basis: $400,000
Mortgage Balance at time of closing $300,000
IRC sec.121 exclusion: $500,000
($250,000 per owner residing there for two of the last five years)
Seller's adjusted basis: $900,000
(purchase price + section 121 exclusion)
Taxable gain: $3,100,000
(net sales proceeds minus adjusted basis)
Federal Tax 20%, CA State Tax 13.3% Medicare Tax 3.8%

Approximate Tax Due: $1,150,100
Approximate Tax Due with a
Deferred Sales TrustTM $0

For more information on
"The Deferred Sales TrustTM,"
please contact our
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NMHC NATIONAL MULTIFAMILY HOUSING COUNCIL

Tool: By-Right Development

THE HOUSING AFFORDABILITY TOOLKIT

Developed in Partnership with HR&A Advisors

By-Right Development

Establishing by-right development allows the supply of housing to grow with demand and helps to stabilize and lower rents.

What Is By-Right Development?

A housing development policy that prioritizes the development of higher density multifamily housing through uniform, codified, and consistent zoning and development regulation.

HOW BY-RIGHT DEVELOPMENT WORKS

A by-right development approval process establishes a rule-based development approval process that improves the ability of the housing market to create new housing in response to increased demand.

BY-RIGHT DEVELOPMENT IMPROVES AFFORDABILITY IN TWO WAYS:

1. Lowers the cost of development through a faster, more predictable approval process.
2. Increases the supply of housing.

Faster, more predictable approval processes lower the cost to obtain development approval, reducing overall development costs. Creating new housing increases the supply of housing and reduces competition between new and long-time residents for existing housing.

> **"All neighborhoods benefit in the long run if they allow for the production of new housing units."**
>
> – Mark Willis, Senior Policy Fellow, NYU Furman Center

RULE-BASED VS. DISCRETIONARY

A rule-based approach clearly outlines the permitted use, shape, and density at a parcel level. When development projects are submitted, review is administrative and does not exercise discretionary judgement on the project.

Conversely, a discretionary approval process gives increased power to legislative bodies and city staff to create conditions and requirements that are unique to specific projects.

NOT IN MY BACKYARD (NIMBY)

NIMBYs are individuals or organizations that oppose the development of new housing in their neighborhood. NIMBYs routinely use discretionary, non-rule-based development approval processes to block the development of new housing.

Effective Policies

1. Rely on rule-based approval process
2. Encompass a significant portion of the market
3. Apply to more desirable neighborhoods
4. Require strong political support

Recommendations

1. Effective by-right development relies on a rule-based approval process.

The development approval process should be predictable. Developers should be able to evaluate with confidence what types of developments will be approved, what types of requirements the community will impose, and how long approval processes will take. Predictability reduces the cost of development by reducing the cost of obtaining development approvals and allows developers to focus on projects that will be approved, increasing overall supply.

By-Right vs. Discretionary

Most cities exist on a spectrum between rule-based zoning and discretionary zoning. A rule-based approach clearly outlines the permitted use, shape, and density at a parcel level. When development projects are submitted, reviews are administrative and do not exercise discretionary judgement on the project. If all the zoning and code requirements are met, approval must be given for the project.

Conversely, a discretionary approval process gives increased power to review boards, elected officials, and city staff to create conditions and requirements that are unique to specific projects.

Most discretionary approval processes create a series of discretionary reviews, each of which can block development or increase costs. The development map to the right represents a typical development process distilled from a literature review of multifamily development processes across the country. Any one of the reviews can be used by NIMBYs to prevent the development of additional housing.

Typical Development Process Map

An effective by-right development process limits discretionary reviews. Every discretionary review can decrease the potential housing supply, either by blocking projects or reducing their size. A restricted housing supply contributes to affordability challenges. Communities may choose to include some additional discretionary reviews related to key public policy goals. But to keep the affordability benefits of a by-right approach, the number of reviews must be limited.

> **"Design guidelines should control only those elements of design that don't affect the basic entitlement."**
>
> – Los Angeles ReCode, 2016

Recommendations

1. Effective by-right development relies on a rule-based approval process.

Discretionary reviews in the development approval process should have well-defined criteria that set high thresholds for intervening in a proposed housing development. Discretionary reviews often use broad jurisdiction to interpret development standards. This flexibility allows NIMBYs to stretch the purpose of discretionary reviews and block new housing, often based on issues beyond the intended purpose of the review.

Design Review Roadblocks

A review of Los Angeles's zoning code[1] showed that the city often requires a lengthy urban design review process for multifamily buildings. This design review was often used as a tool by those that opposed new housing to limit zoning approvals and directly undermine the city's housing affordability goals.

An effective by-right process can still include minor additional discretionary reviews for extremely large projects. A catalytic redevelopment of a city block or a development proposing 1,000 or more units may meet this threshold. **However, only a very small portion of multifamily developments would meet the threshold; most should be approved through a rule-based process.** Local governments tend to set low thresholds, resulting in required discretionary reviews for a significant portion of large projects.

Although the implementation of a rule-based system is an important step in expanding by-right development, it can still be misused to restrict the supply of housing. The wealthy Silicon Valley suburb of Los Altos Hills has by-right zoning that only allows low-density, single-family housing and does not allow for any multifamily housing within city limits. The city does not contribute to the region's supply of housing, despite being adjacent to large and growing job centers.

"Large Project" Zoning Approval in Boston, MA

In Boston[2], any project larger than 50,000 square feet (40-45 units) requires a "large project review," which triggers a public comment period, reviews with interested City and State agencies, design review, and a negotiation process with the planning board. This has resulted in projects being "engineered" to fit the allocated 50,000 SF by reducing units, which artificially reduces Boston's housing supply. This process can take dozens of months and has created a cottage industry of consultants that manage multiple layers of review.

The process has three public review steps:

1. A Project Notification Form;
2. A Draft Project Impact Review analyzing the environmental, traffic, neighborhood, and other impacts of the project; and
3. A Final Project Impact Report in response to concerns raised during the public hearing.

At each point in this process, pressure from neighborhood groups can mount and halt or shrink the project, despite Mayor Walsh's housing goals in the Boston 2030 comprehensive plan.

A city's rule-based zoning policy must facilitate sufficient multifamily housing development to be an effective housing affordability tool.

1. Los Angeles ReCode, 2016.
2. "What to Include in PIL" Boston Planning and Development Authority.

Recommendations

3. Effective by-right policies apply to more neighborhoods with increased opportunities.

While development in all markets is helpful, developing new housing in strong areas has a larger stabilizing effect on a locality's rents than developing in weaker areas. **Neighborhoods with increased opportunities like good schools and amenities have the greatest demand.** They also tend to have more political and financial resources to use discretionary approval processes to block new housing. Moving to a by-right approach stops the misuse of discretionary reviews and leads to more housing development and more affordability.

> **"Living somewhere that feels like the suburbs but is next to an express train."**
>
> **DITMAS PARK, BROOKLYN**

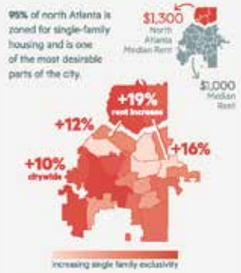
In order to reach the New York City's ambitious housing and equity targets, the Regional Planning Association (RPA) has recommended that the city up-zone and expand by-right development to all neighborhoods – including traditionally residential neighborhoods.[1]

The RPA found that none of these "desirable" neighborhoods, defined by RPA as tracts with median incomes greater than $50,000, top performing elementary schools, and within 0.6 miles of subway access, were up-zoned since 2000, unlike other middle-income neighborhoods in Brooklyn and Queens. These neighborhoods effectively blocked all up-zoning attempts and maintain low-density communities, while the city lacks sufficient housing.

If development is blocked in desirable neighborhoods, it moves to lower-income, largely minority communities. The discretionary approval process and the lack of by-right development in high opportunity neighborhoods are rarely identified as culprits, but they play a key role in the process of displacement.

Demand for Housing in Desirable North Atlanta has Spilled Over to West and East Atlanta.[2]

95% of north Atlanta is zoned for single-family housing and is one of the most desirable parts of the city.



Development in north Atlanta has been constricted by zoning, shifting demand to adjacent parts of the city. This has resulted in greater displacement and decreased affordability in parts of west and east Atlanta.

1. "A NYC as Transit-Oriented as We Think?" – RPA Lab, 2018
2. HR&A analysis, Atlanta Regional Housing Study, ACS 2016 5-year survey

Recommendations

4. Effective by-right policies require strong political support.

Strong political will and leadership is required to establish and sustain an effective by-right development policy. NIMBYs will put pressure on elected and appointed officials to block by-right development that they believe will impact their quality of life.

There are a number of ways to create political support for by-right development and improve affordability. Local governments and concerned community members should pursue multiple approaches:

Encourage community support and Yes In My BackYard (YIMBY) groups that advocate for increased development and multifamily housing to stabilize rents and improve affordability. These groups can be valuable partners of local governments and help spread awareness about the link between by-right development, increased supply, and greater affordability. Several of these groups have formed across the country, with active members in many cities facing high levels of discretionary zoning like Los Angeles, San Francisco, and Cambridge.

Review existing efforts to promote statewide by-right development. This is a drastic measure but may be necessary to overcome local opposition to new housing. A statewide approach takes the issue out of the hands of local elected officials and allows for the formation of broader coalitions of support.

"The Anti-Snob Law"

– MASSACHUSETTS CHAPTER 40B[1,2]

The best example of this is the Chapter 40B "anti-snob law" in Massachusetts, which allows development of affordable housing to be built in towns where less than 10% of housing is affordable despite local town zoning ordinances. It was created in 1969 to reduce local zoning and permitting barriers to housing production and to encourage the production of housing in all communities throughout the state.

If certain conditions are met, developers are eligible to submit a comprehensive permit to the local Zoning Board of Appeals (ZBA). Projects are approved 90% of the time. If they are not approved, the developer can appeal to the state Housing Appeal Committee. In these cases, the burden of proof falls on the local ZBA to prove that the project "demonstrates a valid local concern that outweighs the regional housing need."

1. Interview with Chapter 40B administrators
2. Wall et al. "Borrowing Innovation, Achieving Affordability: What we can learn from Mass. Chapter 40B," 2016.

Considerations & Limitations

Efforts to improve affordability in a community must include some form of by-right development to be effective.

Impact

The reliance on discretionary zoning in place of by-right development restricts the supply of housing and decreases affordability for all income levels. Studies of the Bay Area, New York City, Boston, and Los Angeles have all found that sharp increases in zoning restrictions contribute to the current housing affordability crisis, exacerbate wealth disparities, and result in economic and racial segregation. The discretionary approval process allows NIMBYs to use traffic, school crowding, and environmental impacts of new housing to prioritize their quality of life over housing affordability for the broader community. Finally, by-right development reduces the potential impact of NIMBY groups on projects and communities.

> **"In 1960, Los Angeles was zoned to accommodate 10M residents and had a population of 2.5M. In 2016, the city was zoned for only 4.3M with a population of 4M."**[1]

Market

Expanding by-right development is an effective strategy to increase supply and affordability in strong and weak markets alike. In both strong and weak markets, there are neighborhoods where there is demand for more housing. **It is most effective to expand by-right development in neighborhoods where demand pressure is the highest – this is where there is the greatest need for additional supply.**

When desirable neighborhoods restrict zoning and create excess demand, it causes demand pressure on adjacent communities, resulting in widespread rent increases and displacement.

Housing Goals

INCREASED HOUSING SUPPLY

INCLUSIVE, MIXED-INCOME NEIGHBORHOODS

When implementing housing policies, local governments may pursue a range of housing goals. Expanding by-right development is an effective strategy to **increase the overall supply of housing** by responding to demand increases. It can also create mixed-income neighborhoods, as cities undo the deleterious effects of exclusionary zoning and build in more desirable neighborhoods.

1. "The White House Obama Administration) Housing Affordability Toolkit (September 2016)

Recommendations Summary

To design an effective by-right policy, a city should take a four-tiered approach.

1. EFFECTIVE BY-RIGHT POLICIES RELY ON RULE-BASED APPROVAL PROCESSES

- The development approval process should be predictable.
- Discretionary approval processes used by most cities create a series of obstacles – often in the form of multiple layers of discretionary reviews – to develop new multifamily housing.
- An effective by-right development process should include only a limited number of discretionary reviews.
- Although a rule-based system is an important step in expanding by-right development, it can still be misused to restrict the supply of housing. A city's rule-based zoning policy must facilitate multifamily housing development to be an effective tool in stabilizing and reducing rents.

2. EFFECTIVE BY-RIGHT POLICIES ENCOMPASS A SIGNIFICANT PORTION OF THE MARKET

- The larger the scale of a by-right policy in terms of where it applies within a jurisdiction, the greater the potential impact on affordability.
- Local governments need to understand the magnitude of projected population growth and scale their by-right policies accordingly.

3. EFFECTIVE BY-RIGHT POLICIES APPLY TO MORE DESIRABLE NEIGHBORHOODS

- By-right development policies have the greatest impact on housing affordability in high-demand neighborhoods by reducing the competition between existing residents and new residents for a limited supply of housing.
- Moving to a by-right approach stops abuse of discretionary processes and leads to increasing housing development in desirable areas.
- When desirable neighborhoods reject by-right policies, new housing development concentrates in lower-income and minority communities, driving displacement.

4. EFFECTIVE BY-RIGHT POLICIES REQUIRE STRONG POLITICAL SUPPORT

- Strong political will and leadership is required to establish and sustain an effective by-right development policy.
- Encourage Yes In My BackYard (YIMBY) groups that advocate for increased development and multifamily housing.
- In strong markets, tie by-right policies directly to the production of units with below-market-rate rents.
- Consider regional or statewide policies mandating by-right development when necessary to overcome local opposition to new housing.

By-Right Development Economics

By-right development impacts affordability in two key ways – it reduces the cost of development and increases the supply of housing.

Reduced Development Costs

By-right development reduces both soft costs and land costs. An efficient and predictable entitlement process reduces carrying costs, consulting fees, and other costs associated with approval processes when compared to a lengthy discretionary review process. Land costs are reduced when the zoning premium on multifamily land is rendered obsolete – by-right policies increase the number of parcels with few zoning restrictions, reducing competition and associated land costs.

When costs decrease, developments require less financing and less rent to ensure project viability. Policy changes that allow for more by-right development can lead to lower rents for individual multifamily projects, resulting in lower overall rents.

The magnitude of land and soft cost savings depends on the specific market conditions of each city, in addition to the current permissiveness and duration of the entitlement process.

By-Right Development Economics

By-right development impacts affordability in two key ways – it reduces the cost of development and increases the supply.

Increased Supply

By-right development policies increase the housing supply and, consequently, housing affordability. One of the largest factors driving the national affordability crisis is rising rents in existing low-rent housing. Those rent increases are the result of failing to build enough multifamily housing to accommodate new renter households.

By-right development increases affordability indirectly. As supply increases, it reduces competition for existing housing and leads to lower rents. This indirect impact can be significant. Below is the estimated[1] impact of a 1% increase in housing supply on rents and the number of households that would be able to afford rental housing as a result.

DECREASE IN SHARE OF UNITS <$800 SINCE 2000 (PERCENTAGE POINTS)	EFFECT OF 1% INCREASE IN SUPPLY: REDUCTION IN RENT	EFFECT OF 1% INCREASE IN SUPPLY: INCREASE IN AFFORDABILITY (BY HOUSEHOLDS)
Atlanta 15.7	0.63%	690
Sacramento 19.3	0.98%	720
Minneapolis 15.1	0.95%	780
Denver 20.9	0.98%	1,300
Pittsburgh 21.1	1.19%	730
San Antonio 19.3	0.82%	720
Seattle 14.5	1.02%	1,500
Tampa 26.8	1.00%	580

A **1% increase** in overall supply in Pittsburgh would add **1,300 units** to the market and reduce overall prices by **1.19%**. This would make Pittsburgh affordable to **730** additional households.[2]

1 A 2016 study by the Bay Area Council Economic Institute ("Solving the Housing Affordability Crisis") measured the effect of various housing policies based on the number of households for which housing would become affordable as a result of the policy using a 30% housing cost-burden assumption. The report evaluated the responsiveness of price to changing the supply through policy. Using a similar method, UMA evaluated the number of households for which housing would become affordable, given a 1% increase in the overall supply of the eight case-study cities.

2 730 additional households would pass the threshold below 30% for affordability.

UPCOMING EVENTS

Name Rental Property Owner Class

Date & Time: Wednesday, December 4th; 4:00 p.m. - 5:30 p.m. | EBRHA Members Only
Presented by: Shani Bowen | EBRHA, Member Services Coordinator
Topics: The New Rental Property Owner class is an introduction to rental property ownership. It will cover what's necessary after the purchase of your rental property, how to market your property and common frequently asked questions.

Unless noted, all events are held at:
3664 Grand Avenue • Suite B
Oakland, CA 94610

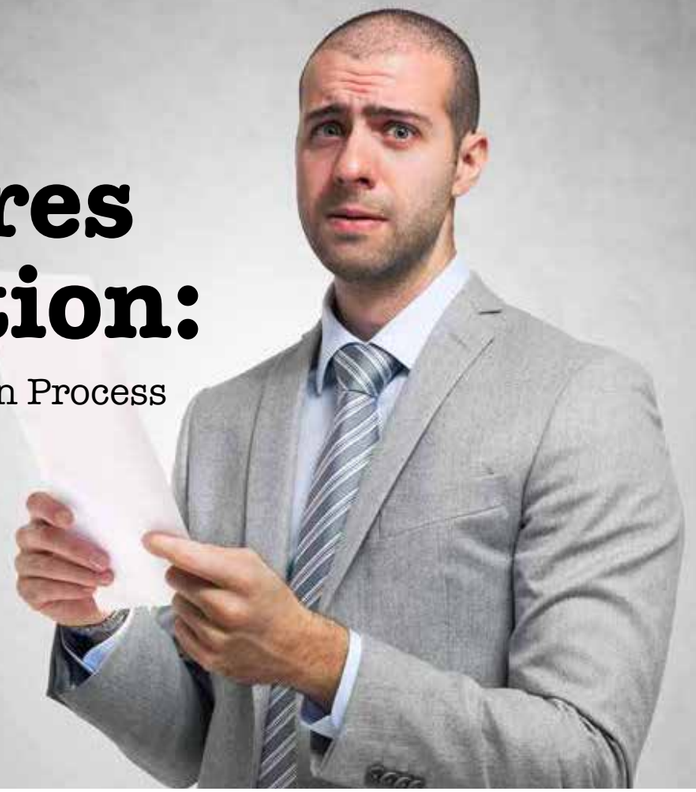
EBRHA
EAST BAY RENTAL HOUSING ASSOCIATION

TO REGISTER, GO TO EBRHA.COM/EVENTS
OR CALL 510-893-9873

Proper Procedures for Eviction:

The A to Z of the Eviction Process

BY BECKY BOWER



Unfortunately, evictions are a costly risk when owning or managing a rental property. While some tenants vacate after a simple eviction notice, others require your local courts and the aid of the sheriff's department. Regardless of the situation you have with your troublesome tenants, take some time to review everything you need to know about how to evict a tenant and the eviction process before proceeding with your own renter.

Cozy Up with your Local Eviction Laws

Before you start drafting up your eviction notice, you need to know if you can evict your tenant. Eviction laws vary from state to state, and even individual cities can have their own ordinances in place, so understanding your local eviction laws will dictate how you'll evict your tenant. On top of your state and city's eviction laws, take the time to review the terms written on your lease to determine how to move forward.

Without a court order, there are quite a few things you cannot do (no matter how frustrated you are with your renters). These restrictions are prohibited from:

- removing the tenant's belongings from the property
- forcibly removing the tenant
- changing the locks of the property without the tenant's consent
- shutting off essential utilities
- harassing the tenant

Violating any of the restrictions above can jeopardize your eviction case, and you want the courts on your side.

Do you have "Just Cause"?

While most states don't mandate that you have a 'good' (or 'just') reason to evict a tenant, many cities and states are starting to require this. The approved "just causes" can vary, but a few common reasons are:

- Non-Payment of Rent
- Breach of Lease
- Owner-Occupancy

Rental properties that are affected by "just cause" eviction laws can only evict their tenants if they fit into one of the "just cause" categories. Without just cause, rental property owners who violate this law can face serious legal penalties.

Even if your city or state doesn't have "just cause" eviction laws, it's a good practice to document why the eviction is necessary regardless, so consider this an extra cautionary step in your eviction process.

The Formal Eviction Notice

Once you've established that you can legally evict your tenant, you'll need to make sure you follow your state's legal procedures to a T. First and foremost, you're going to need to provide "notice of eviction". This means, providing your tenants of a written document notifying them why they're being evicted, what they can do to avoid the eviction (like pay rent), and the deadline.

While you should double check your state's notice requirements, we recommend you include the following:

- Have a deadline to "pay-rent or move out" (if non-payment of rent is your just cause)
- Include the amount owed, including fees (if non-payment of rent is your just cause)
- The number of days required (for you) before filing the eviction paperwork with your local court
- Time stamp the notice. This can be sent via Certified Mail/Return Receipt Requested with the United States Postal Service (USPS).

File Your Eviction with the Courts

If your tenants did not move out of their own volition, then it's time to file your eviction with your local courthouse. This will entail filling out the eviction paperwork and paying the filing fee. It's likely that you'll have to show proof that you provided the proper amount of notice before filing (this is where the receipt from certified mail comes in handy), so be sure to bring copies of the notice as well.
Once filed, the clerk will schedule a hearing and notify the tenant on your behalf (via a summons).
The Court Hearing

While you're waiting for your court date, you'll need to collect all the documents you have relating to your renter. This includes lease agreements, payment records or bounced checks, any sort of communication records between you and your tenant (phone, text, or email records), a copy of the written notice, and the dated proof of notice.

How to Evict the Tenant: What to do if they don't leave

If the court sides in your favor, then your renter will have a set amount of time to vacate the premises. This time frame depends on your local laws, and in some cases when the eviction was filed. If your tenant doesn't leave within the allotted time frame, you'll need to contact the Sheriff's department (and potentially pay a fee) to escort them off the property.

Collecting What is Due

There are a few options you can do to try to collect past due rent or fees from your evicted tenant. First and foremost, a lot of states allow you to deduct past due rent, property cleaning fees, and the price of the storage unit for abandoned possessions from the deposit. Beyond the deposit, you can take your prior renters to small claims court to pursue the owed rent money.

You can also garnish their wages or tax refund, although these processes require taking your tenant to court. To garnish your prior renter's wages for back rent, you'll need to sue your tenant, win a judgment and then get a court order to recover the payment directly from your tenant's earnings. Federal law limits wage garnishment to no more than 25% of the tenant's net pay (and if the tenant has other garnishments, you'll have to wait to get paid), and state law can place stricter limits. In some cases, you might be able to get a wage garnishment order through the eviction alone rather than going to small claims court. However, if your tenant was a government employee or was on a government paid program (unemployment and welfare), you'll be unable to garnish their wages.

Some states allow you to garnish the tenant's taxes, but keep in mind that this is typically only available within a certain amount of time and is typically awarded on first-come-first-serve basis. The benefit to this method is if you successfully snag a tax garnish then the wages are automatically collected from their refund.

Finally, you can hire a private debt collector. We recommend Rent Recovery Solutions, as they charge a flat fee (no commission) to send collection letters and calls on your behalf and report the collected debt to the credit bureaus (Experian, Equifax and TransUnion). While it's difficult to gauge what the true cost of an eviction is as the amount of time spent on an eviction varies and the price of legal fees is differs from state to state, some analysis' have shown the cost to exceed $10,000 per case! As you work through a troublesome tenancy and take steps in your eviction process, take deep breaths and remind yourself that you'll get through this. Learning how to evict a tenant is half of the battle.

We wanted to let you know about plans that Californians for Homeownership legal foundation has to enforce California's new ADU laws.

On October 9, Governor Newsom signed SB 13, AB 68, and AB 881, all of which were supported by C.A.R. Together, these bills create a new statewide system of permissive ADU rules. The revised ADU law invalidates, in its entirety, every local ADU ordinance in the state, unless the local ordinance already complies with all of the provisions in the new law. The legal foundation is not aware of any city or county with a local ordinance that complies with the new law, so the law is expected to create a "clean slate" of ADU rules across the state.

The legal foundation has published a summary of the key provisions of the new law on its website: https://caforhomes.org/aduupdate . This list of key provisions will double as the foundation's list of "non-negotiable" items in discussions with local officials. Resources permitting, the foundation intends to litigate against any city that does not comply with at least these aspects of the new law.

In the next three months, the legal foundation plans to focus on three major strategies for enforcing the new ADU law:

First, the foundation plans to send a letter to the Community Development Director, Director of Planning and Building, or equivalent staff member at every city and county in the state, starting with larger cities and cities in major metropolitan areas. This letter will explain the new law and the foundation's plans to enforce it, and it will invite each city to respond if staff believes that the city's existing ordinance complies with the new law.

Second, the foundation will be closely monitoring for cities that attempt to establish moratoriums on ADU development, which are illegal. The foundation will swiftly and aggressively counter any local attempt to establish a moratorium. If a city goes forward with a moratorium, the foundation will sue on a very short timeline (likely a week or two).

Third, the foundation will be monitoring the development of local ADU ordinances across the state. Because the new state law invalidates existing local ADU ordinances, a large number of cities are expected to develop new ordinances within the next three months. If the foundation has concerns about a draft ordinance or advice being provided by city staff, it will send a letter to the appropriate decision-making body (Planning Commission or City Council).

Local AORs will receive notice of the above-referenced letters, and if the foundation is planning to file a lawsuit it will engage in discussions with the local AOR prior to initiating legal proceedings.*

To support these efforts, please let us know if you learn that a city or county is considering a draft ordinance or implementing a local policy that would violate or frustrate any of the key provisions of the new law listed on the foundation's website. You are also encouraged to participate in public meetings on the ADU issue.**

*Please keep in mind that extended discussions will not be possible concerning lawsuits over moratoriums, because of the very short timeframe involved.
**Please keep in mind that the foundation is a separate entity that is legally distinct from C.A.R.

If you have questions, please let me know.

Rick Laezman, Director
Local Governmental Relations and Legislative Communications
California Association of REALTORS®

CALIFORNIANS FOR HOMEOWNERSHIP

Our Mission | Our Work | Education | Contribute | Get In Touch

On January 1, 2020, it will become easier than ever to build Accessory Dwelling Units in California, thanks to a package of new bills from the Legislature. These bills invalidate local ADU ordinances across the state and replace them with state-mandated rules.

The key highlights of the new law are summarized below. For a convenient printable version, click here.

For the full text of the new ADU laws, click here.

Reduced Costs and Burdens for Developing ADUs

- Cities **must approve ADU applications within 60 days**, without a hearing or discretionary review.
- For ADUs permitted by 2025, cities **cannot require the owner to live at the property**.
- Cities **cannot charge any impact fees** for ADUs under 750 sqft; fees for larger ADUs are limited.
- **Homeowners associations must allow** the construction of ADUs.
- **ADUs can be developed at the same time as a primary unit**, under most of the same rules.
- A city must **delay code enforcement** against an existing unlawful ADU to allow it to be legalized.

ADUs Subject to Automatic Approval — No Local Limits

Cities must permit certain categories of ADU **without applying any local development standards** (e.g., limits on lot size, unit size, parking, height, setbacks, landscaping, or aesthetics), if proposed on a lot developed with one single-family home. ADUs eligible for this **automatic approval** include:

- An **ADU converted from existing space in the home or another structure (e.g., a garage)**, so long as the ADU can be accessed from the exterior and has setbacks sufficient for fire safety.
- A **new detached ADU that is no larger than 800 sqft**, has a maximum height of 16 feet, and has rear and side setbacks of 4 feet.
- **Both of the above (creating two ADUs)**, if the converted ADU is smaller than 500 sqft.

- No minimum lot size requirements.
- No maximum unit size limit under 850 sqft (or 1,000 sqft for a two-bedroom ADU).
- No required replacement parking when a parking garage is converted into an ADU.
- No required parking for an ADU created through the conversion of existing space or located within a half-mile walking distance of a bus stop or transit station.
- If the city imposes a floor area ratio limitation or similar rule, the limit must be designed to allow the development of at least one 800 sqft attached or detached ADU on every lot.

Adding Units to Multifamily Properties

For the first time, the new laws allow units to be added to **multifamily buildings**. Cities must permit these types of units in multifamily buildings without applying any local development standards:

- **New units within the existing non-living space of a building** (e.g., storage rooms, basements, or garages). At least one unit and up to ¼ of the existing unit count may be created this way.
- **Two new homes on the same lot** as the multifamily building but detached from it, with 4-foot side and rear setbacks and a 16-foot maximum height.

CALIFORNIANS FOR HOMEOWNERSHIP

SIERRA CLUB TREE TEAM

HOST A TREE / VOLUNTEER

Do you have a public area in front of your home that could be home to a tree? Can you commit to caring for the tree for at least 3 years? Beautify your neighborhood by signing up for a tree with the Tree Request form.

Want to volunteer to plane trees? Sign up to volunteer with us on our activities calander or Meet up page.

CONTACT US

Sierra Club Tree Team Website

www.sierraclub.org/san-francisco-bay/tree-planting

Volunteer through Meetup

www.meetup.com/sanfranciscobay

Email us

sctreeplanting@gmail.com

What's new? Through their Community Relations Advisor, EBRHA continues to broaden communication with local government officials, Realtor associations and other housing provider advocates throughout Alameda and Contra Costa County. It has become increasingly clear that we're fighting an uphill battle on local and state housing issues. Statewide Rent Control (AB 1482) was passed recently. Cities that do not have local Rent Control and Just Cause Ordinances in place are now subject to statewide laws. Rental property owners, especially small property owners will most certainly need help navigating through the eviction process and rent adjustment guidelines. EBRHA's educational workshops, member meetings, roundtables and property management training offer the assistance needed for owners to adjust to all the new city and state regulations.

Speaking of new regulations, if dealing with Rent Control issues was not enough, Oakland recently adopted a Sidewalk Ordinance that is highly contested among property owners and the real estate community. There was a recent meeting at the Bridge Association of Realtors with two representatives from the Oakland Department of Transportation (DOT) and one of the Councilmembers, who is sympathetic to the challenges that this ordinance created. There were numerous buyers and sellers in escrow at the time this ordinance was implemented. In one case described, in order to get transactions closed, a Broker had to assist financially to keep the deals together. No thought was given to how this ordinance would impact the real estate industry the elderly or disabled property owners! As a result of this meeting, a task force has been created to work with the DOT and Councilmembers to see how this law can be streamlined to remove some of the burdens it has created for real estate professionals, sellers and buyers.

When it pertains to housing, there seems to be an ongoing rush to implement laws without consulting with the experts in the housing industry. As a result, it creates more discord and distrust between our city officials, their constituents and the various business and trade organizations. There never seems to be a well thought out plan before rushing to vote on legislation. It appears city officials would rather implement laws and deal with the consequences later. More and more cities in the Bay Area are considering implementing more stringent rent control ordinances that are primarily focused on tenant's rights while property owner rights are being violated. So, the saga goes on!!

ARPB-Realtist Marketing Meetings Insurance

Rotary Fairyland Meeting

Rotary Business Expo

Rotary Weekly Meeting

Bridge AOR Monday Marketing Meeting

THE FUTURE OF HOUSING

WHEN RENTAL OWNERS GET A VOICE: PART 3

BY RON KINGSTON

With hundreds of cities and counties across America trying to deal with a dearth of housing stock, public officials at all levels are getting involved. Whether these policymakers are in the early stages of debate or actually implementing changes, rental property owners are being painted as the villains. As long as that narrative continues, the one's with the most to lose will continue to be left on the outside of the discussion; with minimal opportunity for feedback. California Strategic Advisors has written a 3-part series that examines the future of housing and provides viable solutions to ensure rental property owners are substantial players in the process. Part 3 examines how rental owners can ensure laws are implemented appropriately and assist with the nuances of policymaking.

> **When rental owners attempt to work within the system, they can extract positive liabilities that protect them in the long-run.**

Leveraging one's policymaking knowledge and experience in the Legislature requires more than sponsoring and introducing legislation. To be effective advocates that are considered subject matter experts it is important to also assist with the implementation of a bill; regardless of whether one supported or opposed in the onset. For the final edition in our "The Future of Housing" series we are taking a look at legislation that required rental property owner's assistance at ensuring the bill was properly implemented. Often, Legislators are first and foremost concerned with getting their bill to the Governor's office. This means that often bills are signed into law without regarding for the nuisances and specific consequences that could materialize once implemented. As effective advocates, it is the job of lobbyists to follow up on these newly signed laws and make sure unintended consequences do not manifest.

Working with the legislature can also ensure that well-meaning laws are implemented in a way that protects the tenants. In 2010, the state implemented a law requiring carbon monoxide detectors in every rental unit. While a well-intentioned policy, the language did not adequately address battery operated alarms and failed to properly notice tenants or owners when a smoke alarm system is defective or no longer operational. Over the years, rental owners also noticed that the beeping caused tenants to remove or disable the detector. These live-threatening issues were corrected by the advocacy of rental owners, pushing for language that ensured tenants would actually be safe when a smoke detector was installed and operable. Four years after SB 1394 was passed, new language was added that required "a place on the device where the date of installation can be written, incorporate a hush feature, incorporate an end-of-life feature that provides notice that the device needs to be replaced, and, if battery operated, contain a non-replaceable, non-removable battery that is capable of powering the smoke alarm for a minimum of 10 years." Fire Marshalls opposed the bill because they claimed the technology did not exist, but by making it law, it forced smoke detector companies to research and develop it. And we opposed the bill until the bill was amended to require tenants to report disabled or nonfunctioning detectors because we explained to the legislature that the tenant would be the only one that would know the condition of the detector during the term of a tenancy. Changes to the original policies probably saved thousands of lives, and it was due to our active involvement in shaping the law. The policy has also benefitted owners by minimizing damage and protecting all tenants from fire hazards.

> **The policy has also financially benefitted owners by decreasing insurance costs and protecting the property from renters with a smoking habit.**

While sometimes these policies can be intrusive, they can also allow property owners to benefit by removing some of the inherent liabilities that often plague renting to tenants. These benefits are not always direct, but they nevertheless can exist. For example, California Civil Code Sections 1929 – 1941 requires a rental unit to be habitable; mandating basic requirements like maintaining plumbing, working heaters, and proper electrical lighting compliant with laws at the time of installation. These policies can also have a tendency to be less reasonable and onerous; for example, sufficient number of garbage receptacles or dead bolts on entry doors. While dead bolts can seem ridiculous in some instances, there are also positive examples that end up benefiting everyone. Take the example of maintained plumbing, such a policy can benefit the owner on the backend by improving operational requirements and maintenance. Or, consider the need for roofing. Replacing one's roof can be quite expensive, but the owner can still recoup their losses vis-a-vis a tax deduction , and also from the increased value on the market. Some studies suggest the return on investment for a new roof may only be 75%, but that is certainly better than nothing.

When rental owners attempt to work within the system, they can extract positive benefits that protect everyone in the long-run. When many of these habitability requirements were being legislated, owners made sure to work with Legislators on the process and were able to shift some legal duties onto the tenant. Instead of simply opposing these policies, we sought to ensure the new laws came with a proverbial carrot and stick. These "affirmative obligations'" were put into place with the understanding that the owner is making large changes to provide a habitable space and that they should not be blamed if something goes awry without their knowledge. The duty to warn of damages specifically places the onus on the tenant to communicate when a repair is needed or risk becoming personally liable. While the issue may be something that has nothing to do with the tenant's own conduct, the duty ensures that the rental owner is not forced to pay for costs once a premises goes beyond normal repair needs. For example, Civil Code § 1941.2 (a)(3) specifically requires the tenant "to properly use and operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as their condition permits." This provides a safety valve for rental owners paying the upfront costs to make the property habitable while guaranteeing a tenant who misuses or abuses the premises will not be able to move on and leave the owner with the full costs. Furthermore, security deposits have been established to make sure the tenant cannot destroy a premise and then claim they are broke. While the deposit does not cover everything, one can only imagine the insurance or out-of-pocket costs without such a provision.

Being able to capitalize on problematic legislation and maintain one's credibility requires comprehensive knowledge of the issue and years, if not decades, of experience. As this series has demonstrated, rental owners are having a hard time having their voice taken seriously because their image is constantly attacked by the media, also legislative turnover creates short-term memories, and it has been awhile since we were the advocates introducing pro-tenant legislation. Fortunately, all these issues can be addressed by taking a concerted and thoughtful approach to our interactions with policymakers.

ISSUE FACT SHEET

Criminal Screening of Residents

A growing number of lawmakers and advocates express concerns about the ability of ex-offenders to successfully transition back to society outside of the correctional system. Policymakers are considering proposals that prohibit the use of arrest and criminal records to varying degrees in resident screening. These restrictions on criminal record screening interfere with housing providers' ability to protect apartment residents, employees and their communities. Additionally, these laws and applicable regulations leave owners and managers vulnerable to potential legal liability under tort laws and disparate impact theory.

Laws and regulations that limit the use of criminal background checks in the housing context appear in a variety of forms at the federal, state and local levels of government. These policies comprise a burdensome patchwork of requirements to which owners and operators must comply.

As a continuation of the Supreme Court's ruling in Inclusive Communities,[1] the U.S. Department of Housing and Urban Development (HUD) issued guidance[2] stating that overly broad screening criteria may have a disparate impact on individuals of a particular race, national origin, or other protected class in violation of the federal Fair Housing Act (the Act). According to disparate impact standards, a rental housing provider would be subject to a fair housing claim or lawsuit if the owner's policy adversely impacts members of a protected class under the Act, regardless of whether the discrimination was intentional. For example, renters' rights advocates argue an owner's policy to deny housing to an individual who has any felony conviction on his or her record would have a disproportionate negative impact on people of color. Using statistical data, they argue African-Americans and Latino populations are incarcerated at higher rates than the general population.

Because agency guidance is easily changed from administration to administration as opposed to regulations or statutes, many state and local jurisdictions have taken steps to enact their own regulations. State and local laws often prohibit housing providers from inquiring into an applicant's criminal history prior to making a conditional offer for housing. Further, jurisdictions may outright prohibit owners from considering criminal history in the screening process or allow owners to evaluate an applicant's criminal convictions from within a certain window of time (e.g. 7 years). Other common provisions that align with HUD's guidance are to prohibit the consideration of arrest and

[1] Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.

[2] U.S. Department of Housing and Urban Development, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (2016): https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

pending charges and to restrict denial of an application only for "substantial, legitimate, non-discriminatory" reasons as defined in the law. In addition to these restrictions, policymakers have considered making ex-offenders an enumerated protected class under local fair housing laws.

Jurisdictions remain divided in regard to protections for individuals who have arrest and conviction records. In 2011, Wisconsin passed a law that repealed existing criminal background check prohibitions in Appleton, Dane County and Madison, Wis. The law also preempts any localities from enacting ordinances in the future that limit rental property owners' ability to consider certain information in the resident screening process, including arrest and conviction records. Numerous jurisdictions have taken other approaches, in order to curb crime in their communities, by enacting nuisance abatement or crime-free housing ordinances that require owners to utilize criminal screening or evict current residents who engage in criminal activity.

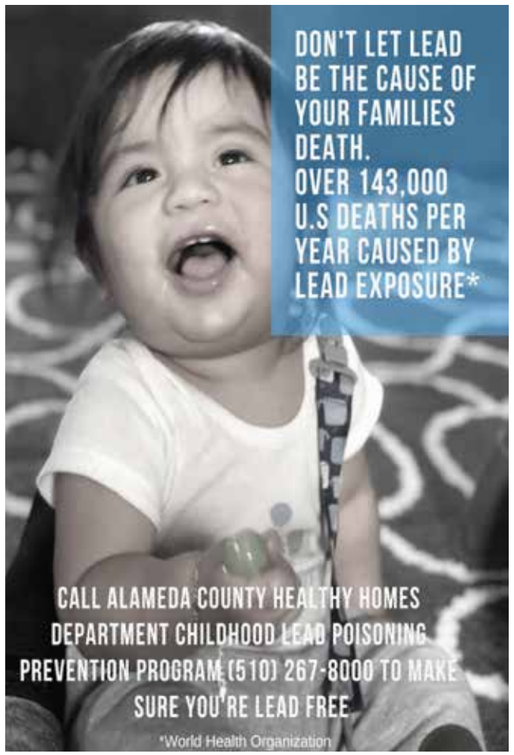
NAA Viewpoint The National Apartment Association opposes all efforts to prohibit apartment owners and operators from evaluating a prospective resident's criminal history as part of the overall screening process.

ISSUE TALKING POINTS

Criminal Screening of Residents

- NAA opposes all efforts to prohibit apartment owners and operators from evaluating presperctive resident's criminal history as part of the overall screening process.
- Criminal record screening is an essential function which helps owners and operators mitigate risk and ensure the safety and security of residents and community staff.
- Citing research that ex-offenders who do not find stable housing in their community are more likely to recidivate, federal, state and local policymakers are enacting measures that prevent providers from evaluating an individual's arrest records, pending charges and criminal convictions.
- Apartment owners and operators face challenges from renters' rights advocates who cite academic research which concludes there is no empirical evidence establishing a relationship between a criminal record and an unsuccessful tenancy1 to argue in favor of restrictive legislation.
- NAA argues emphatically that it is not in the business interests of rental housing providers to reject potential residents without good cause and encourages policymakers to recognize the importance of resident screening in the context of rental housing.
- The rental housing business is premised upon providing safe, quality rental homes in exchange for rent. A lack of safety in an apartment community risks driving out responsible, paying tenants.
- The screening process allows the rental housing providers to gain a comfort level that the prospective resident will fully comply with the terms of their lease agreement, including, but not limited to, ensuring that the potential resident does not pose a foreseeable safety risk to others.
- The best predictor of future behavior is past behavior. This commonsense observation shows that human beings are creatures of habit who often engage in patterns of behavior. Criminal behavior is no exception.
- A criminal conviction, whether by trial or guilty plea, reflects past conduct that may be repeated in the future.

For more information, please contact us:
www.naahq.org | government_affairs@naahq.org



ACTIVATE YOUR VOICE

1. EBRHA On Your Side
Have you experienced a situation or ruling that you feel infringed on due process as a property owner? We constantly hear about outcomes that are just plain wrong. EBRHA collects member experiences in order to make changes to a broken and biased system. Tell us your story today at www.ebrha.com

2. Grand Jury Complaints
This investigative body looks at complaints received from citizens alleging mistreatment by officials, suspicion of misconduct, or government inefficiencies. To file a complaint, send an email to grandjury@acgov.org.

3. Attorney Complaints
The Office of Chief Trial Counsel reviews complaints of unethical conduct by attorneys licensed to practice in California (this includes Rent Board hearing officers and tenant attorneys engaged in suspicious misconduct). To file a complaint, go to www.calbar.ca.gov, find the "Quick Links" on the left side, and then click on "Attorney Complaints" and complete the application.

EBRHA IS HERE FOR YOU. KEEP US INFORMED ON ANY COMPLAINTS FILED WITH THESE AGENCIES.

UPCOMING WORKSHOP

EBRHA
EAST BAY RENTAL HOUSING ASSOCIATION

New Rental Property Owner Class

DATE & TIME
WEDNESDAY, DECEMBER 4, 4:00 P.M. - 5:00 P.M.

PRESENTED BY
SHANI BROWN, EBRHA MEMBER SERVICES COORDINATOR

PRICE
EBRHA MEMBERS ONLY

The New Rental Property Owner class is an introduction to rental property ownership. It will cover what's necessary after the purchase of your rental property, how to market your property and common frequently asked questions.

TO SEE EBRHA'S FULL CALENDAR OF EVENTS, TURN TO PAGE 36 OR GO TO WWW.EBRHA.COM

Unless noted, all workshops are held at
3664 Grand Avenue • Suite B | Oakland, CA 94610

TO REGISTER, GO TO EBRHA.COM/EVENTS OR CALL 510-893-9873. REGISTRATION REQUIRED

community calendar

EVENTS & CLASSES

December

WEDNESDAY, DECEMBER 4TH
New Rental Property Owner Class
Presented by: Shani Brown EBRHA, Member Services Coordinator
Topic: The New Rental Property Owner class is an introduction to rental property ownership. It will cover what's necessary after the purchase of your rental property, how to market your property and common frequently asked questions.
EBRHA Members Only
4 p.m. - 5 p.m.

January

TUESDAY, JANUARY 7TH
Small Property Owner Roundtable
Presented by: Wayne Rowland, EBRHA Board President
Topic: The Small Property Owner Roundtable is a casual meeting to discuss issues, experiences and solutions to common - or perhaps not so common - problems many of you may be facing.
EBRHA Members Only
4 p.m. - 5 p.m.

WEDNESDAY, JANUARY 15TH
Rental Property Management (RPM) 103
Presented by: Carlon L. Tanner of Beacon Properties
Topic: Termination of a Tenancy, Notices, Terminations, Security Deposit, Abandonment.
Free to EBRHA Members, Non-Members: $69
2 p.m. - 3 p.m.

SATURDAY, JANUARY 18TH
EBRHA Member Meeting
Presented by: Eileen Nestor - East Bay Municipal Utility District
Topic: Methods to reduce water, programs that assist with irrigation and grey water.
Presented by: Frank Paré, PF Wealth Management Group
Topic: Retirement and Saving Strategies
Enjoy a complimentary continental breakfast
EBRHA Members Only
Networking 9:30 a.m. I Meeting: 10 a.m. - Noon
Voting 11 a.m. - Noon

WEDNESDAY, JANUARY 22ND
Complying with Statewide Rent Control for 2020
Presented by: Attorney Brent Kernan, EBRHA Board Member
Topic: This new class will focus on new housing laws in the new year, such as AB 1482 and the new ADU ordinances.
EBRHA Members Only
2 p.m. - 3 p.m.

THURSDAY, JANUARY 23RD
Member Mixer
Mixers provide EBRHA members with an opportunity to learn and network with other members, staff and board. Join us!
Location: Aisle 5
EBRHA Members Only
5 p.m. - 7 p.m.

WEDNESDAY, JANUARY 29TH
Property Management Q & A
Presented by: Judy Shaw, EBRHA Board Member
Come and get answers to property management questions from expert Judy Shaw.
EBRHA Members Only
2 p.m. - 3:30 p.m.

No Refunds on no shows; Online advanced registration required! To register and pay, visit ebrha.com/calendar or call (510) 893-9873.
Unless noted, all classes and events are held at the **EBRHA Education Center, 3664 Grand Ave., Suite B in Oakland.**

Oakland

CITY OF OAKLAND

ANNUAL ALLOWABLE RENT INCREASE
2019-20 (3.5%)

RENT ADJUSTMENT PROGRAM FEE
Annual fees are $68 per unit and are due March 1. However, this fee has just been increased to $101. Owners are currently allowed to pass through $34 to tenants.

BUSINESS TAXES & REGISTRATION
Registration fee is $60 and is due March 1. Tax is based on annual gross rental income at a rate of $13.95 per $1,000 of gross rental income. Tax renewal declarations are mailed at the beginning of the year. Online payments accepted at **www.ltss.oaklandnet.com**

LANDLORD PETITION FOR EXEMPTIONS
Claims covered include new construction, substantial rehabilitation, and single-family homes or condominiums.

CAPITAL IMPROVEMENTS INCREASE
FORMULA

$$\frac{\text{(70 \% of Improvement Costs} \div \text{Number of Units)}}{\text{Useful Life of Improvement*}}$$

*REFER TO ORDINANCE FOR NOTICING, QUALIFICATIONS AND AMORTIZATION PERIODS. SEE USEFUL LIFE CHART ON CITY OF OAKLAND WEBSITE.

A CPI increase of 3.5% becomes effective on July 1, 2019. Tenants may only receive one increase in any 12-month period, and the rent increase cannot take effect earlier than the tenant's anniversary date.

In addition, California law requires that for tenancies receiving greater than a 10% increase, a 60-day notice is required; if the increase is 10% or less, a 30-day notice is required. Owners can only impose "banked" rent increases equal to three times the current annual allowable rent increase rate. See schedule at right.

PERIOD	AMOUNT (%)
JULY 1 '19 - JUNE 30 '20	3.5
JULY 1 '18 - JUNE 30 '19	3.4
JULY 1 '17 - JUNE 30 '18	2.3
JULY 1 '16 - JUNE 30 '17	2.0
JULY 1 '15 - JUNE 30 '16	1.7
JULY 1 '14 - JUNE 30 '15	1.9
JULY 1 '13 - JUNE 30 '14	2.1
JULY 1 '12 - JUNE 30 '13	3.0
JULY 1 '11 - JUNE 30 '12	2.0
JULY 1 '10 - JUNE 30 '11	2.7
JULY 1 '09 - JUNE 30 '10	0.7
JULY 1 '08 - JUNE 30 '09	3.2
JULY 1 '07 - JUNE 30 '08	3.3

Visit www.ebrha.com/members to see previous adjustments.

FOR FURTHER INFORMATION CONTACT:
Oakland Rent Board
250 Frank H. Ogawa Plaza, Ste. 5313
Oakland, CA, 94612
510.238.3721 | www.oaklandnet.com

Berkeley

ANNUAL ALLOWABLE RENT INCREASE
2019 (2.5%)

RENT STABILIZATION BOARD FEES
Annual fees are $270 per unit and are due July 1.

RATES OF ANNUAL PAYMENT OF SECURITY DEPOSIT INTEREST

PERIOD	AMOUNT
BERKELEY RATES	
DEC. 2018	0.1%
DEC. 2016	0.1%
DEC. 2015	0.1%
DEC. 2014	0.1%
DEC. 2013	0.1%
DEC. 2012	0.2%
DEC. 2011	0.3%
FEDERAL RESERVE RATES	
DEC. 2014	N/A
DEC. 2013	0.3%
DEC. 2012	0.5%
DEC. 2011	0.4% (CORRECTED 11/3/2011)
DEC. 2010	0.4%
DEC. 2009	1.1%
DEC. 2008	3.4%

Beginning in 1998, adjustments are not allowed for the year following a tenant's initial occupancy. To obtain the maximum amount for a specific address, please use the "Rent Ceiling Database" calculator on Berkeley's Rent Board website.

Visit www.ebrha.com/members to see previous adjustments.

PERIOD	AMOUNT
2019	2.5%
2018	2.3%
2017	1.8%
2016	1.5%
2015	2.0%
2014	1.7%
2013	1.7%
2012	1.6%
2011	0.7%
2010	0.1%
2009	2.7%
2008	2.2%
2007	2.6%
2006	0.7%
2005	0.9%
(1% + $3 IF TENANCY CREATED AFTER JAN. 1999)	

*ADDITIONAL ADJUSTMENTS ARE ALLOWED IF AN OWNER PAID FOR ELECTRICITY OR HEAT.

CITY OF BERKELEY

FOR FURTHER INFORMATION CONTACT:
Berkeley Rent Board
2125 Milvia Street
Berkeley, CA 94704
510.981.7368 | www.ci.berkeley.ca.us/rent

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jhlee@theleeaccountancy.com

Martin Friedrich, CPA
510-895-8310
www.besttaxcpa.com

APPLIANCE SALES & PARTS

Appliance Parts Distributor
Mike De Fazio | 510-357-8200
www.apdappliance.com

APPRAISERS

Access Appraisal: Apartment Specialists
Joe Spallone, MAI | 510-601-1466
www.accessappraisal.com

ARCHITECTURE

InsideOut Design
Pennell Phillips | 510-655-1198
www.aboutinsideout.com

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www.wcharlesperry.com

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Homy Sikaroudi | 510-271-0950
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www.bayareafloodrepair.com

Emergency Services Restoration
Maria Perez | 800-577-7537
www.esr24.com

HARBRO Emergency Services & Restoration
Malcolm Stanley | 650-670-2364
malcolm.stanley@harbro.com

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Steve MacFarlane | 510-651-9506
www.pwsei.com

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Jenny Villena | 925-299-1323
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www.momentum-electric.com

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www.tecelectric.net

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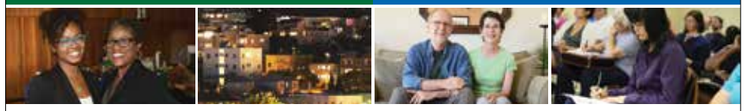

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Our membership consists of more than 1,500 rental housing owners, property managers, attorneys and other service contractors. Altogether, EBRHA represents over 30,000 rental units, and serves over 25 cities throughout Alameda and Contra Costa counties.

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