

Rental • Housing

EAST BAY RENTAL HOUSING ASSOCIATION | JULY 2019

EXPENSIVE MISTAKES MOST PROPERTY OWNERS MAKE

AND HOW TO AVOID THEM

PLUS:
WHEN A HOUSE IS NOT A HOME
I DON'T RENT TO PEOPLE WITH DOGS



EBRHA
EAST BAY RENTAL
HOUSING ASSOCIATION

Contents

JULY 2019



14

When a House
is Not a Home

BY BRENT KERNAN



8

Expensive
Mistakes
Property
Owners
Make

BY DAN LIEBERMAN

16

I Don't Rent to
People with Dogs

BY ELAINE LEE

Features & Columns

- 6 NEWS
Legislative Activity and Local Policy
- 24 FEATURE
The Potential Cost Savings of Solar
BY LES SHAVER
- 28 FEATURE
Useless Scorecards
BY RON KINGSTON
- 30 FEATURE
Rent Control
COURTESY OF THE NATIONAL APARTMENT ASSN.
- 36 COMMUNITY OUTREACH
Community Advisor Report and Photos
BY GEORGIA W. RICHARDSON

Events & Directory

- 23 UPCOMING EVENTS
- 40 COMMUNITY CALENDAR
- 42 VENDOR DIRECTORY
- 46 AD INDEX

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Nathan has been a member of EBRHA since 2013, often volunteered on committees and was the Secretary of the EBRHA Board of Directors before becoming Association Executive. Born in Berkeley and raised in Oakland, Nathan was a scholar-athlete before entering real estate. He and his partner exemplify a mom-and-pop rental housing provider, having been owner-residents of a fourplex and now building an ADU in their home. Nathan now enjoys spending time with his family.

Nathan has studied housing issues relentlessly and written about many issues affecting East Bay housing. He has extensive personal experience with rent board petitions, a background of over ten years in commercial and rental property leasing and sales, and he has worked in property management for over six years. Nathan has a keen eye for fairness in policy and practice – he is delighted to lead EBRHA's membership and housing communities toward equitable solutions.



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Ron Kingston is the EBRHA state lobbyist and president of the California Political Consulting Group. He has 30 years of lobbying experience and is one of the original writers of the state's Costa-Hawkins Act. He grew up in South Lake Tahoe and lives in Carmichael with his wife Sherrie, a financial planner. In his spare time, he cycles, skis and takes international scuba diving trips.



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Elaine Lee is an attorney practicing in the Bay Area, specializing in real estate law and estate planning. She is also a real estate investor who has successfully acquired, developed and managed commercial and residential real estate for over 30 years.



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Georgia is the Community Relations Advisor for East Bay Rental Housing Association. She is responsible for bridging EBRHA's communication and relationships with individuals and organizations in the community, city government and other real estate related organizations. She is also a real estate Broker with over 35 years experience and served as the 2003 President of the Oakland Association of Realtors. She has a vast sphere of influence in the community and is dedicated to using her experience and networking skills to educate and promote EBRHA's benefits to rental housing providers and other real estate related organizations.



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Berkeley News: Golden Duplexes & Living Trusts

The Berkeley Rent Board has been asserting that rental properties (Golden Duplexes and possibly ADUs) held in a “living trust” are not owner-occupied and therefore not exempt from Rent Control and Just Cause eviction restriction. This assertion is based on the inaccurate notion that an owner holding their property in a living trust for probate purposes does not qualify as a “natural person.” As such, they are notifying owners that only certain owners are no longer exempt (based solely on the way in which they hold title), and in some instances, are charging retroactive registration fees. In practice, living trusts do not impact taxation by way of any separate tax ID or social security number, nor do living trusts impact ownership rights and responsibilities, or the triggering of a sale for Prop 13 purposes or otherwise.

Oakland News: Occupied Duplexes & Triplex

On June 4, 2019, the Oakland City Council voted unanimously to remove the exemption from rent control on owner-occupied duplexes and triplexes. Despite impassioned comments about the lack of demographic data made by Council Member Lynette Gibson-McElhany, the City Council passed the second reading without a single “No” vote. Oddly enough, the owner-occupants affected by this hasty change were offered a “compromise”. The so-called compromise allows for only three years’ of banked rent increases, far less than the ten years already granted to owners who have been under rent restrictions for years. In other words, small owners who have not raised rents in as many as ten years have no way of recapturing the rental income that they had forgone, and now have even less rights to manage their properties than owners of fully-rented duplexes and triplexes.

The special relationship, which of course still exists on the premises within owner-occupied rental communities, is gone from Oakland’s Rental Housing Ordinance.

Next proposal by Oakland City Council for July 2019: mandatory participation in government leases to Section 8 housing voucher recipients.

Concord News: Rent Control & Eviction Restriction

On Wednesday, June 19th, the Concord City Council met to consider rent control and eviction restrictions. An ad-hoc committee had been formed to push new regulations. The items considered included:

- A rent increase “moratorium”
- Eviction restrictions conveniently described as “just-cause eviction ordinance”
- Relocation payments to tenants in the amount of three-months “market” rent
- Binding arbitration subject to a new city agency’s decision. An administrative law judge would be hired to review any rent increase over 5%, and would then determine if the increase is “justified”.

This proposal was quashed after receiving only one vote of approval.

Hayward News: Rent Control & Eviction Restriction

On Tuesday, June 18, the Hayward City Council considered a new rent control and eviction restriction ordinance:

- Limit rent increases to 5% for many rental units
- Permit a lengthy binding arbitration process of potentially more than 7 months where property owners cannot collect any portion of a rent increase
- Require a “just cause” for ending a lease
- Mandate reporting of all rent increases and eviction actions to City Hall with penalties that range from a \$100 fine to 6 months imprisonment
- Require noticing to tenants that exceeds notice provisions as already required by State law

These regulations passed.

El Cerrito News:

A referendum by the people of El Cerrito was filed with the City Clerk related the Just Cause for Eviction and “Prohibition on Harassment of Tenants” Ordinance that was adopted on May 21st. The referendum by nearly 2000 property owners suspends implementation of the ordinance and requires the El Cerrito City Council to repeal the ordinance or let the voters decide.

EBRHA COMMITTEES

EBRHA WELCOMES IT'S MEMEBERS TO PARTICIPATE ON COMMITTEES. PLEASE CALL OR EMAIL EBRHA OFFICES TO FIND OUT MORE ABOUT GETTING INVOLVED.

EXECUTIVE COMMITTEE

The Executive Committee consists of the EBRHA Officers and meets at least once a month to review EBRHA matters and establish the agenda for the Board Meetings. Each Committee and Task Force provides a brief written report prior to an Executive Committee meeting.

NOMINATING COMMITTEE (CHAIR: LUKE BLACKLIDGE)

Responsible for the selection and recommendation of EBRHA Members to serve on the Board of Directors. Basic procedures are set forth in the Bylaws.

POLITICAL ACTION COMMITTEE ("PAC")

Responsible for making political contributions. Under current law, it is a separate entity with separate Directors.

GOVERNMENT POLICY COMMITTEE (CHAIR: ARCOLA MOORE | CO-CHAIR: WAYNE ROWLAND)

Responsible for (1) researching and recommending government public policy positions pertaining to the rental housing industry to the Board for approval; (2) communicating with members, local governments, community organizations, the media, and the public; and (3) supervising staff and consultants assisting with this work. (Tell 'our' Story)

MEMBERSHIP COMMITTEE (CHAIR: JOSHUA POLSTON)

Responsible for determining the methods of increasing the numbers of members and the servicing of members throughout Alameda and Contra Costa Counties. The Committee could also establish its other priorities and recommend programs, staffing and a budget for these for consideration by the Board of Directors, evaluating and refining programs as needed.

TECHNOLOGY TASK FORCE (CHAIR: RICK PHILIPS | CO-CHAIR: CONOR MURPHY)

To provide support to staff and board in understanding the complexities, desires, and needs of the Association in Technology. Including but not limited to, software, hardware, social media, website, and CRM.

EDUCATION COMMITTEE (CHAIR: CARMEN MADDEN)

Responsible for reviewing the current EBRHA curriculum and making recommendations for new or modified classes as well as investigating new or alternative methods of providing information including off-site and/or on-line.

EVENTS COMMITTEE (CHAIR: JACQUELINE JACOBS)

Responsible for creating and planning EBRHA's events calendar.

COMMUNICATIONS COMMITTEE (CHAIR: IRINA GELFENBEYN | CO-CHAIR: ARCOLA MOORE)

Oversees development and design of EBRHA's member communications including postcards, Rental Housing magazine, email blasts, newsletters, marketing materials and website. Manages the overall EBRHA communications calendar.

RENT BOARD TASK FORCE (CHAIR: OPEN)

Task forces are single-purpose limited groups assigned a particular task by the Board of Directors. One example is responding to Oakland Rent Board, procedures, hearing/appeal practices and rulings.

FORMS COMMITTEE (CHAIR: BRENT KERNAN | CO-CHAIR: LUKE BLACKLIDGE)

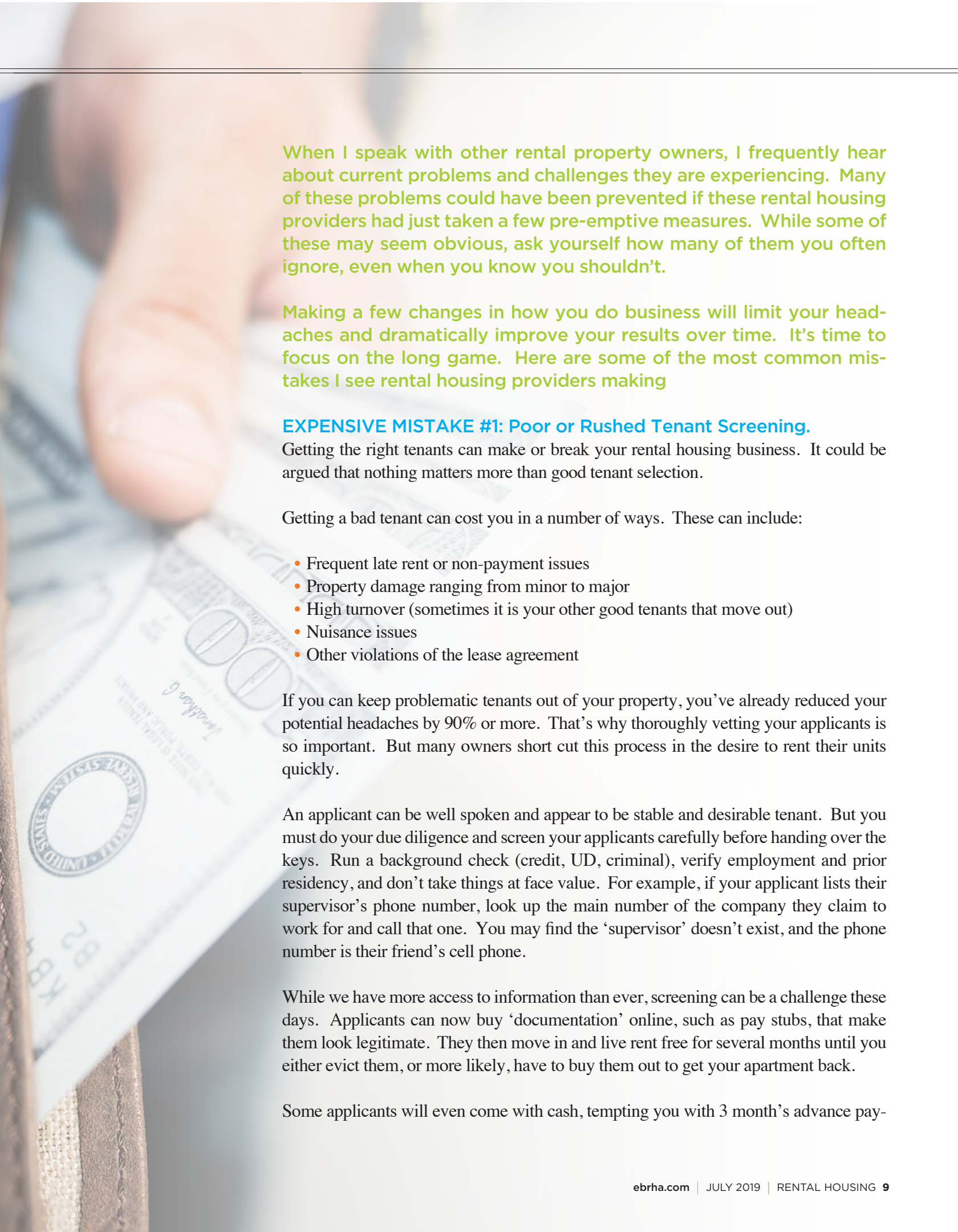
The Forms committee is charged with maintaining to the fullest extent the accuracy, legal correctness and usability of the set of EBRHA forms offered to members for use in rental property management.

STATE LEGISLATIVE COMMITTEE (CHAIR: JACK SCHWARTZ)

The EBRHA State Legislative Committee works with the EBRHA lobbyist and CalRHA Legislative Committee and lobbyists with respect to drafting, supporting or opposing proposed State legislation and regulations affecting the housing industry. The Committee generally meets weekly during the time that the State Legislature is in session and as needed at other times of the year.

EXPENSIVE MISTAKES MOST PROPERTY OWNERS MAKE

AND HOW TO AVOID THEM
BY DAN LIEBERMAN, EBRHA MEMBER



When I speak with other rental property owners, I frequently hear about current problems and challenges they are experiencing. Many of these problems could have been prevented if these rental housing providers had just taken a few pre-emptive measures. While some of these may seem obvious, ask yourself how many of them you often ignore, even when you know you shouldn't.

Making a few changes in how you do business will limit your headaches and dramatically improve your results over time. It's time to focus on the long game. Here are some of the most common mistakes I see rental housing providers making

EXPENSIVE MISTAKE #1: Poor or Rushed Tenant Screening.

Getting the right tenants can make or break your rental housing business. It could be argued that nothing matters more than good tenant selection.

Getting a bad tenant can cost you in a number of ways. These can include:

- Frequent late rent or non-payment issues
- Property damage ranging from minor to major
- High turnover (sometimes it is your other good tenants that move out)
- Nuisance issues
- Other violations of the lease agreement

If you can keep problematic tenants out of your property, you've already reduced your potential headaches by 90% or more. That's why thoroughly vetting your applicants is so important. But many owners short cut this process in the desire to rent their units quickly.

An applicant can be well spoken and appear to be stable and desirable tenant. But you must do your due diligence and screen your applicants carefully before handing over the keys. Run a background check (credit, UD, criminal), verify employment and prior residency, and don't take things at face value. For example, if your applicant lists their supervisor's phone number, look up the main number of the company they claim to work for and call that one. You may find the 'supervisor' doesn't exist, and the phone number is their friend's cell phone.

While we have more access to information than ever, screening can be a challenge these days. Applicants can now buy 'documentation' online, such as pay stubs, that make them look legitimate. They then move in and live rent free for several months until you either evict them, or more likely, have to buy them out to get your apartment back.

Some applicants will even come with cash, tempting you with 3 month's advance pay-

ments. Some will try to get possession early, before signing the lease ('Can I just put a few things in the apartment this weekend?') and then you won't be able to get them out. Or they will try to charm you into making an 'exception' to your usual screening procedures.

Don't fall for it. This is the time to be careful. Check everything. Do not let anyone move in before you've completed a thorough, proper screening.

EXPENSIVE MISTAKE #2: Not Revising your Rental Agreement at least Annually.

You would think this would be routine, but many rental property owners have never really read through the clauses in their lease agreement, much less reviewed them with an eye to making them current or more effective. Laws and regulatory requirements are always changing, and the last thing you need is to find out that your rental agreement is defective as you are trying to evict someone.

Your lease is a powerful tool. It spells out the terms of renting the apartment, including what you are responsible for and what the resident is responsible for. This is the contract between you and your resident that the courts will look to.

Some areas where we revised our lease in the past to make it stronger (and clearer) included:

- How payments were allocated – For example, if a tenant pays March rent, skips April, and then pays May rent, with a memo stating his payment is for May rent – can you apply the rent to April or not? How does this affect your 3-Day notice?
- Drainage lines - Who is financially responsible for clearing clogged drains?
- Maintenance and Repair obligations of each party. For example, if a leak occurs due to a building

issue, but the tenant doesn't report it right away and it causes more damage, who is responsible?

- Guest use of common area facilities.
- Procedures for handling after-hours lock-outs.

If you find certain issues coming up repeatedly, make a note and put it in your 'lease update' file. Then, at least once a year, add or amend clauses in your rental agreement to address this situation.



Whether due to new laws, or just to prevent recent problems you've experienced from recurring, updating your agreement annually ensures you are both in compliance with the law, and improving your business practices.

EXPENSIVE MISTAKE #3: Allowing Bad Habits to Form

It may start as regularly accepting late payments, not addressing nuisance issues - such as loud parties - promptly with written documentation, allowing tenants to start doing repairs themselves and then deducting the cost from the rent, or any number of seemingly small items. But these minor issues have a way of developing into bad habits the longer you allow them to go on without 'hitting the reset button'.

Many owners don't realize that their actions can create an implied agreement that supersedes the written contract. For example, if you've been accepting late payments for several months without ever sending a notice to the resident or charging late fees, it will make it harder for you to evict in court should the tenant stop paying. When was rent actually due? On the first, as stated in the rental agreement, or by a later date, as dictated by your consistent actions? How can you expect the judge to enforce the terms of your lease, when you won't even do it yourself!

Allowing tenants to do their own repairs can cost you in a number of ways. What happens if the tenant hurts himself while doing work for you? You don't want to be sued

(and not have your insurance cover you) because you thought you were saving a few dollars. While you might never have your tenant do major plumbing or electrical repairs, even something as straightforward as painting can cost you. I've seen carpets ruined simply because the tenant didn't know to properly use a drop cloth.

A long time ago, I tried to help out a good tenant after his hours at work were cut back, by finding work for him to do around the building. Problem with this 'solution' was my tenant started to become reliant on me for his income. Then, one month when his rent went unpaid, he claimed he didn't have the money because I wasn't giving him enough work to do! It was now my fault he didn't have the money! Remember, as a property owner, no good deed goes unpunished.

Make sure you do that move-in checklist with every new tenancy. If a tenant is leaving junk out on their balcony, contact them about it. The first time rent is paid late, make sure the tenant is aware you noticed. As a housing provider, you will encounter these situations and you need to think through what options might be available in advance.

For example, when a resident offers excuses for not paying rent on time, we help the resident make a game plan of where and how they can find the money. This might include finding out if they have any available credit remaining on their credit cards, having them contact family members for help, or furnishing them with a list of local agencies that provide emergency rental assistance. If the resident is unable to come up with the money despite your combined efforts, or seems unwilling to do their part, then it is time to help move them out as soon as possible. If you've fallen into bad habits, and haven't been enforce-

ing your lease or house rules, you need to put your residents on notice that effective 30 days from now, you will again strictly enforce your written rental policies. If you don't follow your own rules, you certainly can't expect your tenants to. Realize that it's a slippery slope from a well-managed property to one where the tenants run you. Treat your rental property ownership as a business – and get things back on track early.



EXPENSIVE MISTAKE #4: Not knowing the basics of landlord/tenant law better than your tenants

Did you know that correcting maintenance issues are your responsibility even if the tenants caused the damage? You can usually bill the tenant for the cost of the repair or ultimately terminate the tenancy, but you can't just ignore it because they caused the problem. Some tenants

try to play games by also denying access to their unit when you come to make the repair. You have the legal responsibility to make repairs. You may have to make several attempts, and document your actions, but don't let them keep you from doing these things. If you don't, it will come back to haunt you.

Security deposits are another key area where you need to know the law. Make sure you send your former resident an accounting of their security deposit within 21 days of move-out. You will lose your right to deduct legitimate expenses if you miss this deadline. Don't lose money you could legally withhold from the security deposit just because you were late getting this out.

Know how to handle abandoned personal property. You should document what was left behind (a few photos help here) and make sure you send out the proper notices before disposing of items or they may claim that grandma's gold jewelry was left behind and you took it.

Make sure you know proper notice procedures and pre-eviction procedures. A minor mistake on a 3 Day Notice to Pay Rent or Quit can cause you to lose the entire case and you will have to start over. Not serving a proper Notice to Enter (24 hour notice) can cost you as well.

Interpretations of Fair Housing laws continue to broaden. You want to make sure you are saying and doing the right things. While most property owners and managers do not intentionally discriminate, it is easy to make a mistake. Fair Housing testers are there, trying to bait you and it is easy to fall into their trap if you don't know what you are doing.

For example, a recent tactic is to call a property and ask whether they have a no pet policy. If told yes, they then follow up with a question about bringing a large dog or other animal in for disability related reasons. If they are again told 'no dogs allowed', the owner may soon find themselves served with an expensive fair housing legal action.

Legal cases can be very expensive and time consuming. There is a peace of mind that comes with knowing that you would win should a case be brought against you. Know the basic legal issues of running your business, and consult an attorney when you have questions.

EXPENSIVE MISTAKE #5: Not Inspecting your Rentals Regularly.

You need to make sure your tenants are treating your property with respect and adhering to the terms of your lease. I can't tell you how many buildings I've walked into where the tenants never opened a window and now the walls are covered with mold. Or the tenant doesn't seem to know that you're supposed to throw away old food and clean up the kitchen – so now the unit (and soon the neighboring unit) is crawling with roaches and other vermin.

You could lose an eviction when the tenant stops paying rent due to 'habitability' even if the tenant caused the problem. But you won't know if you don't inspect regularly.

I've taken over buildings where there hasn't been a documented inspection since move-in day! In my opinion, that's multifamily malpractice. While I've found that most tenants take reasonable care of their apartments, here are a few of the surprises I've seen:

- Finding 2 refrigerators in the unit (usually a sign of unauthorized occupants – not that they eat a lot)
- Pet paraphernalia in 'no pet' buildings
- A locked bedroom door in larger units (usually a sign of partial subletting)
- Guns, syringes, drug paraphernalia, etc.

Inspections have also been great for catching problems early:

- Dripping faucets where the resident never complained
- Smoke detectors with batteries removed (the chirping sound bothered them)
- Extremely dirty carpet that will become permanently damaged if not cleaned.

How often should you inspect? From a practical standpoint, I'd recommend semi-annual inspections. These don't have to be invasive, but a lot can happen in six months. Think of them like a 'Jiffy Lube' oil change. Something done regularly to prevent a more serious problem from occurring. Not only will you catch lease violations or abuse to your property early, it sends a message that you care about your property and are paying attention.

Remember, most tenants are good, take care of your property, and follow the rules. After all, it is their home. Some will try to hide things – like having a friend watch their pet the day of the inspection, and an inspection will not catch those. But you will certainly catch some issues early. And the others will probably clean their apartments thoroughly as they try to hide things from you. So, not too bad a second option.

EXPENSIVE MISTAKE #6: Not having a good employment agreement with your site manager.

Whether you compensate your manager with a rent reduction, a salary, or some combination of both, make sure you are following the law and doing it correctly. You are obligated to keep records, pay taxes, and meet many other requirements as an employer. Laws relating to resident manager compensation can be confusing, so make sure you have a competent attorney review your resident manager agreement and compensation package. There is a maximum rent you may charge (the amount changes every year), laws relating to handling 'on call' hours, and labor code issues which differ if you offset manager pay from the rent or have the manager actually write you a rent check.

Penalties for not complying with wage laws are significant. It is absolutely essential that you have a signed written employment agreement with your resident manager. Then, require your manager to turn in a signed time sheet reflecting their actual hours worked. Too many owners have found themselves in front of the labor board paying huge fines while their angry, former manager claims they really worked 80 hours a week, under slave conditions, without any documentation to prove otherwise.

Especially with labor laws, the burden of proof is on you. You should set the standard hours for work, and what approval is required for overtime compensation. Keep the apartment as a condition of employment, so when employment ends, they are not allowed to stay beyond a reasonable amount of time (unless your local rent control law requires otherwise).

EXPENSIVE MISTAKE #7: Not documenting properly

Lack of good documentation is probably the biggest reason rental housing providers lose cases in court or pay settlements they shouldn't need to. Whether trying to evict a tenant or defending yourself from a tenant initiated legal action, you must assume you will be viewed as 'guilty until proven innocent'. I know that's not the way it should be, but it is the way it is. In your dealings with your residents, make sure you document the reasons for your decisions and for your actions.

If you do get into a legal situation, you want the situation to be one where it is your well-documented stack of evidence against a tenant's sketchy claim. Document it all in writing. When you have everything in writing, there's no dealing with 'he-said, she-said' issues. Verbal contracts are very difficult to prove in defending a lawsuit.

The easiest way to create documentation is to write a short, follow-up email after a conversation with a tenant. Even if you don't send the email, write one to yourself and send it to you. At least that creates a date and time stamp on your actions.

When documenting your evidence, remember why you are doing this: to protect you and your company in the event of lawsuits or fair housing complaints. These documents are not private. They can be viewed by opposing attorneys, insurance carriers, and others. Do not put in items that can be viewed as questionable or discriminatory.

Lawsuits don't usually happen the next day or even the next week after an incident occurs. Many times, they hit you months or even sometimes years down the road. Without good documentation, how are you going to vividly remember the events as they actually occurred?

Worse case, should you have a tenant that was trying to build a case against you and was documenting things, you will have your own set of written documentation to fight it. You do not want to be in the situation where it is the tenant with well documented evidence against your sketchy documentation. You WILL lose in that case.

These are just a few of the mistakes I see owners frequently encounter. Any one of these can cost you thousands of dollars. Some may cost you tens of thousands. And most are preventable.

I hope this review of mistakes I frequently hear about will help you avoid some very expensive situations. You, as a property owner providing housing services to tenants, are put at risk every day. Avoid the mistakes that might prevent you from realizing your goals with rental property ownership. When the process works, everyone benefits.

WHEN A HOUSE IS NOT A HOME

(SINGLE FAMILY VARIETY)

BY BRENT KERNAN

Those who own single family homes may be in for a significant change in how the Costa-Hawkins Act protects them. On April 26, 2019, in the case *Chun v. El Cid* (Appellate Nos. B295140, B295141) the 2nd District California Court of Appeals issued a published opinion regarding the definition of a single family dwelling based on how it is used, not how it is built. Although not directly dealing with the Costa-Hawkins single family home exemption from local rent control ordinances, its implication directly threaten the applicability of Costa-Hawkins to single family homes.

That case dealt with whether the Los Angeles rent control ordinance's exemption for single-family dwellings applied where a property owner rents with separate rental agreements individual bedrooms (but common access to bathrooms and kitchen). In siding with the tenants, the appellate court looked at the nature of the relationship between the property owner and its occupants rather than the structure itself.

This was in direct contradiction to a 1994 case called *Gabor v. Cox* (1994) 26 Cal.App.4th Supp. 16. As an Appellate Division of the Superior Court case, *Gabor v. Cox* is inferior to the 2nd District California Court

of Appeal. In this sense, the *Chun* case became one overruling the 25 year old *Gabor* case.

The *Gabor* case evaluated much the same facts as in *Chun*. In that case, a property owner had rented to individual tenants the bedrooms of a single family home. However, the *Gabor* case looked at the structure of the accommodation to determine whether the rent ordinance applied—not the nature of the rental relationship involved. Most significantly, the court regarded the fact that it has a single address as determinative.

“The facts support the trial court’s determination that, although appellant’s living area constitutes a dwelling unit, respondent’s building does not constitute a two-family dwelling. Respondent’s building “has one address applicable to it.” This is a single-family residence, in an exclusively single-family residential community. Besides outside access to the unit in question, there is also internal access by an interior stairway.” *Gabor*, at 19.

Not so, says the 2019 *Chun* court. A single family dwelling must have a single family dwelling (or single lease, possibly). It does not matter whether a house is a single family dwelling, what matters is that you have a single family dwelling in it. If that sounds complex, it is meant to be.

THE CHUN COURT WRITES:

“to be designed for occupancy by one family, the group of nine bedrooms, at least two bathrooms, and the kitchen contained in the Property must be designed to give the tenants common access to and use of not simply the kitchen, but also all living areas. Here, the tenants do not have common access to and use of all living areas that form the purported dwelling unit, because (as the trial court found) the tenant of each of the four bedrooms being rented has exclusive use of and access to that room.”

This definition means that no person can have exclusive use of their own bedroom in order to maintain the status of a single family dwelling! Yet that flies in direct contradiction of the nature of one’s bedroom—a room of one’s own, in the parlance of Virginia Woolf. The Chun court concludes, “based on the interlocking definitions of “dwelling unit” and “family,” because Tenants (regardless of familial relationship) do not have common access to and use of all living areas that form the purported dwelling unit, they do not comprise one family within the meaning of section 12.03.”

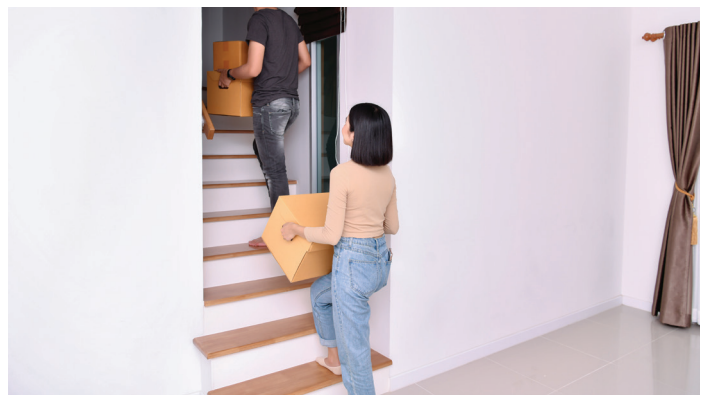
In this way, the Chun court expands the sweep of the rent control ordinance to all units where exclusive use of a room creates an individual dwelling unit by itself. If you rent out a room in your house, it is no longer your house—it is a duplex.

Well, so what—that’s Los Angeles, you might say. The significance of the case is that all California is protected by the similar language of Costa-Hawkins exemption of single family dwellings from rent control. Recently, an Oakland Superior Court case challenged the Oakland rent board’s ruling that rented rooms in a single family home eliminate the exemption under Costa-Hawkins. It seems a sign of the times that the trial court sided with the City of Oakland in determining that Costa-Hawkins does not exempt single family dwellings if a room is rented to an individual under a separate agreement. That judge wrote, “[f]or purpos-

es of landlord-tenant law, “a dwelling or a unit” or a “dwelling unit” is not the entire property to which an owner holds title; rather, it is any area understood to be committed to the habitation of a given tenant or tenants to the exclusion of others.”

That this decision came out only a week after the Chun decision suggests the judge followed its reasoning. The Chun court expressly avoided answering the question whether a boarder renting a room in a single family home creates a duplex for the purpose of the exemption. “We express no opinion as to whether, in a hypothetical case, the owner of a home who simply rents to a boarder is subject to the Ordinance.” That precise situation is the one Costa-Hawkins was meant to protect.

It is a well-recognized tenet of California law that statutes are meant to be interpreted to avoid absurd results. If occupancy determines the characteristic of a dwelling unit, then by the Chun court’s reasoning there is no such thing as a vacant single family home. Yet empty single family homes clearly exist. Zoning, among myriad other purposes, depends upon a designation before a property is occupied or even built. The Chun ruling applied to Costa-Hawkins would create two sets of laws defining a building’s designation.



¹ CA Civil Code §1954.52 et seq.

² *Owens v. City of Oakland Dept. of Housing and Community Development*, Alameda Sup. Ct No. #RG18914638.



**I DON'T RENT
TO PEOPLE
WITH DOGS!**

BY ELAINE LEE

“I don’t rent to people with dogs!” Those were the fateful words that were blurted out by my client to a prospective renter at her perspective Open House in Oakland. That statement cost her \$10,000 because such language is considered discriminatory and a violation of the Americans with Disabilities Act (ADA). The prospective tenant filed a complaint against her with the California Department of Fair Employment and Housing (DFEH) and sued for \$30,000. We were able to settle for \$10,000 which I understand for other real estate lawyers is the going rate for these kinds of mistakes. You can say, “I don’t rent to people with pets,” because service, guide, signal, or support animals are not “pets” according to the Americans with Disabilities Act (ADA), as long as the animal is being used by the Tenant to support a disability or handicap.

It behooves members of EBRHA to take the Rental Property Management 101, 102 and 103 classes to make sure you are doing everything right because in this current rental climate mistakes can be not only costly but horribly stressful and time consuming. As a

real estate lawyer and rental property owner, I can tell you for certain that you can no longer afford to make mistakes in this business. You must be certain, clear and precise in your actions and language toward your tenants and you must leave negative emotions about dogs on the shelf.

HANDLING YOUR APPLICATION AND SCREENING PROCESS FOR PEOPLE WITH ANIMALS

California law allows people with disabilities to use animals to assist them. These laws include the Unruh Civil Rights Act, the California Disabled Persons Act (CDPA), and the Fair Employment and Housing Act (FEHA). Federal disability rights laws, such as the Americans with Disabilities Act (ADA), also protect the rights of people who use service dogs and emotional support animals. When federal and state law differ, whichever one offers greater protection will generally apply.

To determine which California law applies depends on several things: what kind of animal it is, how the animal helps the disabled individual, and the setting or place involved.

SERVICE DOG

A “service dog,” under California law, is a dog trained to help a person with a disability with services such as fetching dropped items, hearing doorbells/smoke alarms, minimal protection work, or pulling a wheelchair. These laws are limited to dogs. One exception, the ADA authorizes the use of miniature horses as service animals in some limited circumstances, California does as well.

EMOTIONAL SUPPORT DOG/ANIMALS

An “emotional support animal” is a dog or other animal that is not trained to perform specific acts directly related to an individual’s disability. Instead, the animal’s owner derives a sense of well-being, safety, or calm from the animal’s companionship and presence. An emotional support animal does not need to be a dog but can be. An individual that uses such a dog is entitled to the same rights under the law as someone with a physical disability that uses a service dog.

Examples of things an emotional support dog can be trained to perform for someone with a mental disability are:

- waking someone with depression and coaxing them out of bed at a specified time in the morning
- comforting the individual if he or she is having a panic attack by and
- provide companionship which can make their owners feel much less alone.

DOCUMENTATION REQUEST

A homeowners’ association may ask for documentation that you have a disability and that you have a disability-related need for the animal. However, the housing provider should not request documentation if your disability and your disability-related need for the service or support animal are apparent. If the housing provider does not have reason to know about the individual’s need for an assistance animal, the request should be limited to the information that is necessary to establish the need. A housing provider may not ask a housing applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person’s physical or mental disability.

FEDERALLY SUBSIDIZED HOUSING

If you receive funding from the U.S. Department of Housing and Urban Development (HUD) or other federal financial assistance, for your tenants, then they have a right to keep a service animal under Section 504 of the federal Rehabilitation Act of 1973. Like the state law right to an assistance animal under the CDPA, if the animal qualifies as a service animal, it should be allowed into the housing on based on the tenant’s representation that the animal performs disability-related work or tasks. They do not need to present a support letter from a treating professional.

PET AGREEMENTS AND POLICIES

Every individual with a disability has the right to be accompanied by a guide, signal, comfort, or service animal, especially if it is trained for the purpose but it is also the tenant’s job to take care of that animal. He must ensure that the animal complies with state and local ani-



mal control laws and is not a danger or a nuisance to the community. Additionally, the individual shall be liable for any damage done to the premises or facilities by his or her dog (California Civil Code Section 54.2).

I strongly recommend that you create and establish a pet policy, as well as a pet agreement which would spell out the requirements for dog stewardship on your property (e.g. pick up waste daily, no loud barking, etc.)

Helpful tips to consider before renting to people with animals: <https://www.thebalance.com/what-to-include-in-your-pet-policy-2125015>

PET DEPOSITS

Pet deposits are similar to security deposits and are refundable. They are meant to cover the cost of property damage, cleaning fees and any unpaid rent when you vacate the property.

There is a maximum amount a California property owner can charge for a pet/security deposit, and that price depends on whether the rental unit is furnished. The owner cannot charge more than two months' rent for an unfurnished unit, and not more than three months' rent for furnished units.

Any dog or cat that shows signs or tendencies of having an aggressive personality, is deemed dangerous by insurance companies, or has a bad referral, the owner may require the tenant to have renter's insurance.

However, a housing provider may not require an applicant or tenant to pay a fee or a security deposit or to buy insurance for the animal as a condition of allowing the person to keep an assistance animal. However, the housing provider can charge the individual for repairing any damage that the animal causes to the unit or common areas.

CONCLUSION

In closing, it is your job to try to reasonably accommodate your tenant's need for a service or companion animal, but if they or the animal do not comply with the local laws, pet policy or agreement, you could conceivably withdraw your permission for him/her to have a dog. At this point it would be a good idea to contact a lawyer for assistance. You cannot afford to make a mistake.

As a rental owner for over 30 years, I actually prefer renting to tenants with dogs because I experience fewer turnovers, increased protection for the property, lower vacancy rates, increased marketability and enhanced profitability. According to the Humane Society of America, "research has proven time and again that pets help most of us live happier and healthier lives. Allowing pets in your rental housing will not only help your residents, it will also help you by generating a positive public image and better return on your investment." It can truly be a win-win situation.



Throw Us a : Clarity Needed on Emotional Support Animals

“He likes to give hugs,” explained Joie Henney to the Philadelphia Inquirer this year, describing his five-foot emotional support alligator, Wally. Wally likes to snuggle, and he helps with depression, Mr. Henney says, and his doctor agrees. If only Wally’s case was the rule, rather than the exception.

The National Apartment Association has long understood the value that emotional support animals (ESA’s) can have for the people that they assist. The devil, as they say, is in the details. Rising indications of abuse of ESA requests are hurting those who need these animals. Both the apartment industry and many states nationwide are concerned, and the time is past due that the federal government act.

Unfortunately, fraudulent accommodation requests for ESA’s, a convenient way to dodge pet fees or restrictions in apartment communities, have been on the rise due to the proliferation online certificate mills. These “services” will “register” any pet as an emotional support animal sight-unseen for a nominal fee over the internet. All that’s required is a short questionnaire, and of course your credit card number. Many even send real-looking certificates and harnesses to denote the animal’s supposed status. The Americans with Disabilities Act prohibits most inquiries surrounding ESA requests, leaving little recourse for an apartment owner to discern between an applicant with legitimate need and a scammer looking to dodge a no-pet policy.

This lawless tangle causes confusion for apartment owners about which animals are actually there to serve, and which are illegitimate.

To illustrate just how stark this rise in claims is, the National Service Animal Registry (NSAR), a private commercial enterprise that sells certificates, vests and badges for helper animals, signed up 2,400 animals in 2011. In 2013, it registered 11,000. As of March 20, 2018, the NSAR has registered 182,030 service and emotional support animals.



To put this figure into perspective, NAA is aware of more than 20 websites or online providers, including NSAR, that offer documentation to their customers in exchange for a fee.

This crisis demands to be addressed by the federal government, and it is not going away.

The US Department of Housing and Urban Development (HUD) has been working hard on formal guidance clarifying the rules surrounding requests for emotional support animals. Common sense rules like allowing ESA certification to require a bona fide relationship with a medical professional, or to provide documentation on the purposes of individual ESA’s could go a long way to clearing up the confusion that has surrounded this issue.

States themselves have become impatient waiting for the federal government to act, instituting a number of misrepresentation laws nationwide intended to curb abuse of reasonable accommodation requests for emotional support animals. But we need action by the federal government to close the floodgates on abuse of the system and restore accountability when it comes to managing these requests. Common sense reforms can make a better world for both apartment owners and their residents who benefit from emotional support animals.

CONTENT PROVIDED BY NATIONAL APARTMENT ASSOCIATION

8 REASONS QUARTERS ARE BAD FOR YOUR BUSINESS

— GEORGE MELCER, CEO SHINEPAY

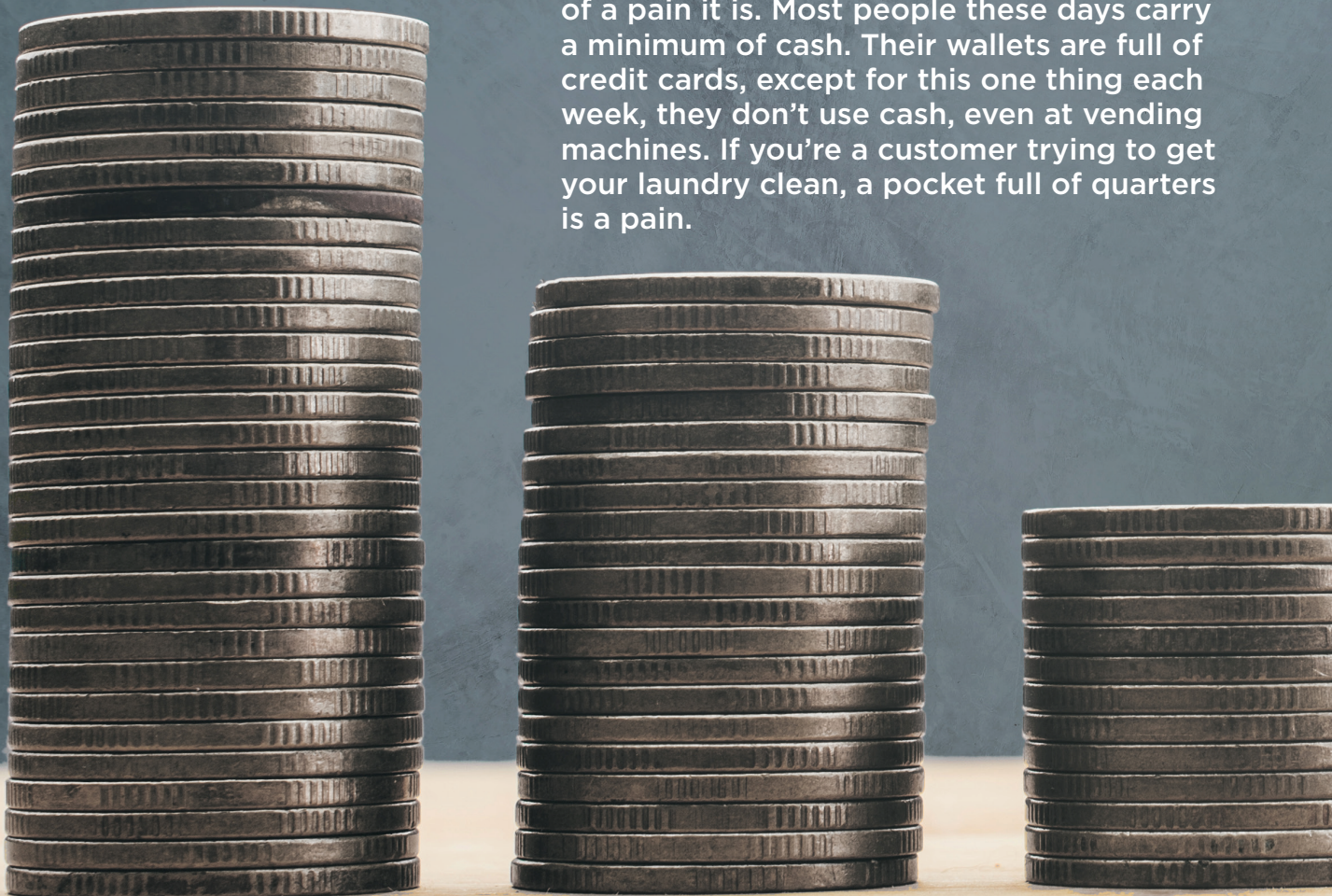
There are times when old technology is costly, more costly than upgrading. Continuing to accept quarters instead of upgrading to a digital payment system is definitely one of those things.

Quarters in the laundry business have been standard for decades. The devices on the machines are relatively inexpensive and easy to extract the money from. Nonetheless, there's a newer, faster way of doing things.

Here are 8 reasons that you need to make the switch to the 21st-century solution and get a digital payment system in your apartment building or laundromat.

1. CUSTOMERS HATE QUARTERS

Unless you're the one having to keep track of the quarters (or the cash to turn into quarters), you might not know how much of a pain it is. Most people these days carry a minimum of cash. Their wallets are full of credit cards, except for this one thing each week, they don't use cash, even at vending machines. If you're a customer trying to get your laundry clean, a pocket full of quarters is a pain.



2. YOU HATE QUARTERS

Needing to stop by every day or every other day and gather quarters is also a pain for you. Every time a machine fills up, someone puts an “out of order” sign on the machine and you’re losing revenue. Quarters force you to be around and available all the time.

3. THEFT AND VANDALISM

It doesn’t take a lot of power to damage the coin box. In fact, with a crowbar and a few minutes, almost anyone can damage and even extract a coinbox. Honestly, the technology hasn’t changed all that much since the boxes were first invented. You lose more than just the money, you lose the box and the coin slide along with it.

4. MANAGING THE PROCESS

If you’re operating a larger laundromat or several, you need to hire someone to help you handle everything. The problem is that the quarters stack up and you want to make sure that deposits are made in a timely fashion. Unless you plan to work seven days a week, it’s almost a requirement that you hire staff to help you.

5. WEEKENDS

If your customers usually bring their own quarters (those change machines are almost always out of quarters on the weekends), they can’t get them after about noon on Saturday. No quarters, no clean laundry. If the laundromat down the road accepts debit cards, your customers will go there and you’re likely to lose them for a long time.

6. REVENUE

In multiple studies, consumers have indicated over and over that they prefer to pay with credit cards or online rather than having to use cash. This trend only increases as more and more get accustomed to buying everything online and even using their phones with a tap. If paying for something is inconvenient, customers are far more likely to go someplace else.

7. BEATING THE COMPETITION

If your competitors are still accepting quarters and the customers want to use cards, you win. As we’ve said, the cards are already in their wallets. It’s one less step for them and there’s a lot more security. People don’t get mugged for credit cards too much anymore; they’re too easy to shut off and track down. Cash is still a security risk for many people.

8. WEAR AND TEAR

The moving metal parts of coin slide and coin box are far more likely to wear out than a simple sticker on a machine. That’s how Shine Pay operates and it makes things a lot easier for you and your customers. The money is deposited directly into your bank account (and out of theirs) and your customers never need to carry quarters.

The reality is that there are a lot of great reasons to get rid of those old quarter slides and not any good ones for keeping them.





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UPCOMING EVENTS

Small Property Roundtable

DATE & TIME WEDNESDAY, JULY 9; 4:00 P.M. - 5:030 P.M.
EBRHA Members Only

PRESENTED BY Wayne Rowland, EBRHA President

TOPICS **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.**

Rental Property Management (RPM) 102

DATE & TIME WEDNESDAY, JULY 17; 2:00 P.M. - 3:30 P.M.

PRESENTED BY CARMEN MADDEN, EBRHA MEMBER TREASURER

TOPICS **Rental Agreements & Addenda, Rent Control vs. Rent Regulation, Habitability Issues & Managing Tenancy. Free to EBRHA Members, Non-Members \$69**

EBRHA Member Meeting

DATE & TIME SATURDAY, JULY 20; NETWORKING: 9:30 A.M.
MEETING: 10:00 A.M. - NOON
EBRHA Members Only

TOPICS **Seismic Consultation Presentation -- Larry Guillot of Quake Prepare
Legal Q&A --Brent Kernan, Board Secretary**
Enjoy a complimentary continental breakfast

Member Mixer

DATE & TIME WEDNESDAY, JULY 25; 5:00 P.M. - 7:00 P.M.
EBRHA Members Only

TOPICS **Mixers provide EBRHA members with an opportunity to learn and network with other members, staff and board. Join us!**

aisle 5

Property Management Q&A

DATE & TIME WEDNESDAY, JULY 31; 2:00 P.M. - 3:30 P.M.
EBRHA Members Only

TOPICS **Come and get answers to property management questions from expert Judy Shaw, EBRHA Board Member.**

Unless noted, all events are held at:
**3664 Grand Avenue • Suite B
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THE POTENTIAL COST SAVINGS IN SOLAR

BY LES SHAVER



Solar energy has potential, but there are hurdles. When affordable housing operators want to increase income, there are not many choices.

“Affordable housing has very little capacity to raise rent,” Darien Crimmin, Vice President of WinnCo Development said Bisnow’s Greater D.C. Solar and Sustainability Summit. “But you can control operating expenses through energy efficiency and solar, save 10- to 15-percent or more.”

A key reason to install solar photovoltaic (PV) is to lower energy usage from fossil-based fuels and to lower operating costs for the property. Many housing operators have tackled the easy energy fixes, such as installing low-flow toilets and LED light bulbs, but solar is a bigger investment.

“Energy efficiency helps us as a business,” says Martin Mellet, Vice President of Strategic Initiatives

at Jubilee Housing. “It saves costs and for affordable housing providers – the margins are always thin.”

WinnCo and Jubilee are committed to sustainability. And not just because of the cost savings and a commitment to the environment.

With multiple developers competing for subsidies to help build affordable housing, anything they can offer to set them apart is an advantage. If they are building or renovating a sustainable community, that can give them a leg up on the competition.

“It is competitive to get subsidies [for affordable housing],” Crimmin says. “Embedded in that competition is sustainability.”

Those apartment owners are thinking bigger than toilets and light bulbs, though. They see solar as a viable option. WinnCo has more than a dozen

communities with solar on the property and more than two dozen additional properties that participate as subscribers in community solar projects, which is a solar power plant whose electricity is shared by more than one household. Jubilee currently has solar at two communities and plans to install them at two more.

“Our buildings need to look good and perform well,” Mellet says. “We want to make sure that our residents are able to live comfortably in our apartment community.”

Solar, when done correctly, can help resident retention. In addition to reducing costs for Jubilee, energy produced by solar panels helps the community save money on residents’ Pepco electricity bills.

“The majority of our residents have very low incomes,” Mellet says. “They may have less than \$800 a month of disposable income after paying rent. By using a community solar solution, the energy produced by the solar panels on our roof will be directed to our residents to reduce their monthly Pepco electric bills [by as much as \$50 per month]. That additional \$500 or so per year makes a huge difference.”

Mellet also says that the installation of a rack of advanced technology batteries will power a community room for residents if a major storm or other event shuts down the power to the building. This battery pack is powered by the solar array on the roof of the building.

“If there is a crisis, the majority of our residents do not own cars and are not able to leave the area – they will probably shelter in place,” Mellett says. “With the newly installed energy storage system, residents can safely shelter in place for three days during a crisis.”

When a building owner installs solar electricity in the District of Columbia, it can elect to have the energy sent to the grid or back to the buildings. The process isn’t easy.

“There are challenges connecting solar to the grid,” Crimmin says. “The learning curve can be steep.”

One challenge with community solar is that residents must consent to subscribe to the facility to receive benefits. “It is hard to get renters to subscribe,” Crimmin says. “We engage them, educate them and ask them to sign the contract, but trust that the program is legitimate is a major factor.”

“Energy efficiency helps us as a business...It saves costs and for affordable housing providers – the margins are always thin.”

Crimmin says WinnCo needed to contact 2,000 residents to get 150 to sign up. He found that residents, who had been told to be on alert for scams from electric supply companies

that go door-to-door and ask them to sign contracts, were suspicious of signing anything.

To overcome this hurdle, WinnCo hired a local non-profit and held outreach events, to bring residents onboard.

“Really, the key was going through the management office and working through the relationships the residents already had with the individuals that worked at the front desk, for instance,” Crimmin says. “They could reach out to the residents and confirm that the program was legit.”

Even with the additional complications, the result is worth the effort for WinnCo. “We are committed to sustainability and will continue to pursue innovative work in D.C. and across the country,” Crimmin says.

CONTENT PROVIDED BY NAA

Contra Costa County Non-Smoking Ordinance for Unincorporated Areas

Summarized from Contra Costa County Municode

Contra Costa County enacted a secondhand smoke and tobacco product control ordinance for unincorporated areas within the county.

The stated purposes of the policy are to “protect the public health, safety and welfare against the health hazards and harmful effects of the use of addictive tobacco products; and further to maintain a balance between the desires of persons who smoke and the need of nonsmokers to breathe smoke-free air, while recognizing that where these conflict, the need to breathe smoke-free air shall have priority.”

REQUIRED TERMS IN NEW LEASE AGREEMENTS INCLUDE:

1. A clause stating that smoking is prohibited in all dwelling units must be included in the written agreements.
2. A clause stating that it is a material breach of the lease or rental agreement to:
 - a) Violate any law regarding smoking while on the premises;
 - b) Smoke in any dwelling unit
 - c) Smoke in any multi-unit residence common area where smoking is prohibited

OTHER TERMS:

A property owner's failure to enforce any smoking regulation of a lease or rental agreement on one or more occasions does not constitute a waiver of the lease or rental agreement provisions and does not prevent future enforcement of the lease or rental agreement provisions.

A property owner is not liable under this chapter to any person for a tenant's breach of smoking regulations if: The property owner or manager has fully complied with all provisions of this chapter; and upon receiving a signed, written complaint regarding prohibited smoking, the owner provides a warning to the offending tenant, stating that the tenant may be evicted if another complaint is received. Upon receiving a second signed, written complaint against the offending tenant, the owner may evict the tenant, but is not liable for the failure to do so.





Policy Summary:

The areas covered include all multi-unit common areas, except that a property owner may designate a portion of an outdoor common area as a smoking area. A designated smoking area of an outdoor common area of a residence must not overlap with any area where smoking is otherwise prohibited by local, state, or federal law; must be located at least twenty-five feet in all directions from non-smoking areas; must not include areas used primarily by children; must be no more than twenty-five percent of the total outdoor common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.

If a dwelling unit in a multi-unit residence is subject to a lease or other rental agreement and smoking is authorized under the lease or rental agreement, smoking is permitted in the dwelling unit until the lease or rental agreement is modified to prohibit smoking. However, If a dwelling unit in a multi-unit residence is owner-occupied, smoking is permitted in the owner-occupied dwelling unit until July 1, 2019.

“Smoking” or “No Smoking” signs, whichever are appropriate, with letters of not less than one inch in height, or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), shall be conspicuously posted in every building or other place where smoking is regulated by this division by the owner, operator, manager or other person having control of the building or other place. This section does not require the posting of “No Smoking” signs inside or on the doorway of any dwelling unit in a multi-unit residence. No ashtray or other receptacle used for disposing of smoking materials may be placed at any location where smoking is prohibited or otherwise prohibited by law.

In a multi-unit residence where units are rented or leased to tenants, the owner and manager of the residence shall disclose whether a policy for handling smoking complaints is in effect at the multi-unit residence, and if so, shall provide a copy of that policy to each tenant along with every new lease or rental agreement for the occupancy of a unit in the multi-unit residence.

Commenced July 1, 2018, every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence that is entered into, renewed, or continued month-to-month must include the terms specified, and on the earliest possible date allowed by law after providing any required legal notice.

USELESS SCORECARDS



The Misguided Politics
of Legislative Voting Records

BY RON KINGSTON

“An elaborate act of [rubbish], generally used to distract attention away from the sheer uselessness of the actual project or act.”

**– Definition of “Dog and Pony Show”
by Urban Dictionary**

Every legislator in local, state, and federal public office likely has at least one. It could be hanging in their office, proudly displayed to constituents or providing a warning shot to influential lobbyists. It could be touted on their campaign materials and website as being the beacon of truth demonstrating commitment to one’s platform. Or, it could be used by advocacy groups for their members to target problematic legislators. So, what are we talking about? A Legislative Scorecard that tracks how a legislator voted on a particular issue, bill, or subject. For example, the issue could be women’s rights, and the voter scorecard might list a dozen bills impacting women’s rights and how the legislator voted on them. Depending on the scorecard, certain bills might have a higher level of importance attached to them. The final result is a scorecard that allegedly claims to rank legislators based on their political leanings. The truth is that the scorecard is more akin to a pat on the back for some Legislators than an actual leveraging technique that can be used for change.

Traditionally, these scorecards list every legislator, creating a compare and contrast for the reader. And, regardless of how one chooses to publicize the results, the desired outcomes are essentially the same:

commend the legislator for being a “champion” or shame him or her for being opposed to the particular issue. Unfortunately, scorecards are a lot like eating McDonalds: it sounds good at first, but you quickly regret it. The problem with legislative scorecards is they fail to hold anyone accountable, often are highly misleading, and are more likely to offend than to sway votes on a particular issue or bill.

Legislative scorecards improperly focus on the wrong voting event. As a bill moves through the legislative process, it can be voted on over a dozen times. For example, Assembly Bill 1110 (Friedman), changing rental increase notices from 30 to 90 days, was voted on multiple times before it encountered a Floor vote (where all members of the Assembly or Senate vote on the legislation). Those previous committee votes are important, as they require the bill to get through a smaller voting threshold (usually a majority of 9 members) and often are where legislation is heavily amended. By the time the bill reaches the Floor of the house, many of the controversial components have been removed or addressed by the author. Voting for a bill that has been neutered is not the same as supporting legislation in its original version. And quite apart from this perspective is

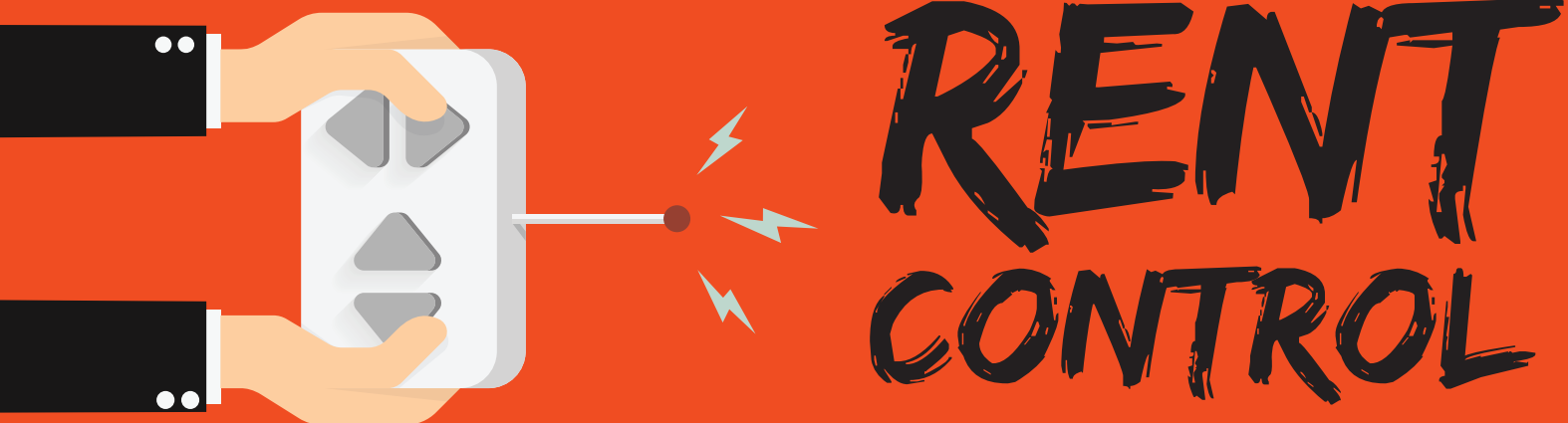
the fact that some members are sick or absent during Floor votes. But a scorecard will likely not take those possibilities into consideration or provide the context to a reader.

Legislative scorecards fail to highlight the negotiations and discussions occurring between the committee hearings. The policy committee is where a bill is vetted and comprehensively discussed by all impacted stakeholders. The policy committee would be the perfect place to hold a legislator accountable for his or her vote, but for the fact that these committees are comprised of only 9-16 members. A scorecard in that instance might show, for example, that some Democrats are anti-housing, but it would fail to properly contextualize a particular Democrat against the rest of the Legislature. For all we know, the scorecard would give the illusion that some Democrats hated our issues when it could be that they are actually far more moderate on them than their colleagues. Furthermore, what if they voted on a problematic bill because of a promise by the author of the bill to address the issue of concern in future amendments? The scorecard would not be able to note whether the author fulfilled his or her end of the commitment. This is the case in AB 1482 (Chiu). Mr. Chiu promised the entire Assembly he would amend his rent control/rent cap bill to address the California Association of REALTORS® issues in the Senate. Arguably, his commitment to fellow members of the Assembly resulted in the bill being sent to the Senate for vote.

Scorecards are more likely to offend legislators and turn them into motivated opponents than to provide reliable voting patterns. Legislators often hate scorecards because they make them look as if they are opposed to an issue without painting the full picture. For example, a teacher turned legislator may vote against an education bill because of one particular component and then be labeled anti-teachers. That type of watered-down analysis frustrates legislators.

Legislators appreciate being able to say they are 100% on an issue. Yet, to truly be 100% requires advocacy groups to advise legislators of which bills will be considered for scorecard purposes. As a result, for example, a reader of a scorecard will believe certain legislators are voting 100% with educators even though those legislators may have voted against education funding, just not the funding bill prioritized in the scorecard.

The bottom line on legislative scorecards is that they should be viewed skeptically, or, to borrow another metaphor, they should be taken with a grain of salt.



- COURTESY OF THE NATIONAL APARTMENT ASSOCIATION

Rent regulation policies (also known as rent stabilization and/or more commonly, rent control) are government-enforced price control measures limiting the rents that property owners may charge in market rate rental housing. Rent control laws and regulations mandate an artificial cap on rent, without monetary investment or compensation by the governing jurisdiction. Rent control distorts the housing market by acting as a deterrent and disincentive to develop rental housing and invest in maintenance and rehabilitation. With little to no ability to earn a profit, investors will shift their investments to other non-rent regulated jurisdictions. In practice, these policies have the effect of increasing the cost of all housing by forcing a growing community to compete for fewer housing units, and reducing the quality of rental housing.

As an Owner or Operator, How Does this Affect My Business?

Currently, 37 states preempt local governments from adopting rent regulation laws and only the District of Columbia and cities and towns in California, New York, New Jersey, and Maryland have rent control or rent stabilization policies in place. However, as housing instability and tenant displacement concerns gain more attention, local governments are increasingly pushing back on preemption laws and considering adoption of these restrictions.

While each jurisdiction's rent control regime is slightly different, their laws and regulatory frameworks often perform similar functions. With taxpayer funding, they establish a local rent board to administer the program and regulate enforcement. They govern the amount and frequency of rent increases, require an approval process for special assessments to cover repairs or major capital improvements, and allow for decontrol of a rent-regulated unit upon vacancy or exceptions for new construction. Also, rent control policies are often coupled with just cause eviction measures or other restrictions that severely limit when an owner can evict a resident.

Rent Control - General Talking Points

- ✓ **Economists overwhelmingly agree** that price control on rent are inefficient, counterproductive and lead to serious negative impacts for housing markets.
- ✓ **Rent control** has significant negative impacts on the condition and supply of existing rental housing.
- ✓ **With limited ability to recover operational costs**, owners may have to postpone or reduce investment in maintenance and improvements to rent controlled properties.
- ✓ **Over time, this lack of investment expedites** the deterioration of these buildings and eventually leads to the loss of critically-needed rental housing.
- ✓ **When price controls on rental housing are lifted**, however, significant new investment in maintenance and rehabilitation takes place.
- ✓ **To preserve the quality and value of their properties**, owners may also convert rent-restricted units to condominiums, housing not subject to rent control or commercial property.
- ✓ **Rent control also discourages the development** of new rental housing which is crucial to restoring the balance between supply and demand in local housing markets.
- ✓ **With no ability to earn a profit on their investment**, developers are incentivized to take their dollars to other, non-rent-controlled communities.
- ✓ **By discouraging development and encouraging conversions**, rent control effectively restricts supply, driving up housing costs.
- ✓ **Rent control costs local governments critical revenue** as the assessed value of rent controlled properties decline and with it the property tax taxes they generate.
- ✓ **This foregone revenue might be a worthwhile tradeoff** if the primary beneficiaries of rent control were low-income families, however, the reality is that they are not.
- ✓ **With almost no exceptions**, rent control laws are not income-targeted allowing anyone along the income spectrum to take advantage of rent restrictions, regardless of need.
- ✓ **In fact, rent control can lead to increased gentrification** and a decline in low income residents.
- ✓ **Administration and enforcement of rent control** policies also require the creation of a large local government bureaucracy at a significant cost to the taxpayer while little benefit.
- ✓ **Housing development, rehabilitation and maintenance generate** significant economic benefits in terms of job creation, wages and overall economic output. Rent control eliminates most of this benefit as rental housing activity is significantly reduced or eliminated.

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Rent Control - Residents Talking Points

- While rent control on its face appears to be a good strategy to help low- and moderate-income individuals, it would in fact do more harm than good.
- Rent control creates winners and losers and ultimately favors affluent citizens of the community.
- "You don't want to be the next San Francisco." It's no coincidence that the most recognizable rent-controlled jurisdictions also have the worst affordable housing problems.
- It is a common strategy in these jurisdictions to ensure success in obtaining a rent-controlled apartment by being the first in the line to apply and bringing cash.
- Often, a greater number of renters compete for a limited number of rent controlled units. Through a system of patronage, only a select few who "know someone" or have the flexibility to go through an exhaustive search process benefit from rent control.
- With steep competition, renters with more financial resources, and ready access to cash, have an advantage over those without.
- Renters who are more financially secure also can afford to pay real estate broker commissions to help them obtain a coveted rent-controlled unit.
- With almost no exceptions, anyone along the economic spectrum can take advantage of rentregulated units, regardless of their financial situation.
- Simply put, there is no access to units afforded those with the greatest need under rent control.
- This is in stark contrast to the Section 8 Housing Choice Voucher Program, Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) or other common forms of financial assistance for low income populations.
- Rent control policies require large bureaucracies called "rent boards" to enforce the law. Among its enumerated duties, the local rent board adjudicates eviction proceedings and makes it more difficult to remove problem residents in rent-controlled units.
- Property owners of rent controlled housing become more risk averse and place greater emphasis on credit scores and income levels in resident selection.
- Since affluent renters reap the most benefits from rent control, and low and middle-income residents find themselves at a distinct disadvantage, it should come as no surprise that these policies can aggravate unintended consequences of gentrification.
- Displacement of residents is exacerbated by a decline in the supply of rental housing in rent-controlled jurisdictions, as housing providers choose to covert to condominiums, or commercial property or housing otherwise not subject to price controls.
- Property owners in these jurisdictions also respond to rent control—and even the threat of rent control being enacted—by selling off their properties or increasing rents.
- To ensure rent control does not stymie housing construction, jurisdictions exempt new development.
- Therefore, older apartment buildings become the only ones covered by the limits on rent increases.
- These older apartments tend to have greater maintenance needs, but since property owners are prohibited from raising rents above the limits imposed by the law, they are forced to reduce maintenance to the point that basic upkeep may not occur unless there is a serious code violation.



● Rather than pursuing rent control policies, voters and legislators would be better served to pursue measures that help low and moderate-income individuals without creating the disastrous impacts of rental housing markets and renters. These alternatives include:

Local public-private partnerships that connect low and middle-income residents to vacant market rate units and pay the gap between the market rate rent and participant's portion of the rent through funds provided by the city, foundations and employers. An example of this is the LIVE Denver program.

Direct rental based assistance programs for low-income individuals for an annual period with recipients receiving a subsidy between \$50 and \$200 a month. An example of this is the Rental Assistance Program in Montgomery County, MD.

Housing grants for rental assistance to low-income residents that covers a portion of monthly rent, and is dependent on household income, household size, and rent amount. An example of this is in Arlington County, Virginia, in the form of a Housing Grant.

Emergency rental assistance to aid income eligible residents facing housing emergencies that could be used to help pay anything from past due rent to first month's rent and security deposits for residents moving into new apartments. Washington D.C. has a program like this called the Emergency Rental Assistance Program.

Property tax credits to cover the difference between the actual rent amount and what renters are responsible for paying by freezing rents for needy individuals. New York City has such a program for seniors and the disabled called the Rent Freeze Program.

Property tax abatement for the development of new rental housing, or rehabilitation of existing rental housing that is occupied by low and moderate-income individuals. Connecticut has a program that offers such tax abatements.

State tax credits for individuals and businesses who contribute to a dedicated fund for the development of low to moderate-income housing. North Dakota has a program like this called the Housing Incentive Fund.

Reduce regulatory impediments that stifle the development of rental housing.

*See References on page 34

ISSUE POLICY STATEMENT

Whereas "Rent Regulation" includes, but is not limited to, rent control, rent stabilization, temporary price control, mandatory inclusionary zoning, and other forms of price control or mandated caps on rents without compensation to owners by the controlling jurisdiction;

Whereas proponents of rent regulation policies propose such measures as solutions to housing affordability challenges; and

Whereas the negative impacts of rent regulation have been thoroughly researched and the ensuing harm to communities and its residents have been thoroughly documented, it is disqualified as a viable policy to affordable housing; and

Whereas rent regulation limits the incentive to invest in new apartment housing, slows the production of new supply and exacerbates housing affordability challenges; and

Whereas rent regulation harms residents by creating an inequitable distribution of controlled units with little to no regard for need or income level; and

Whereas rent regulation harms communities by limiting their ability to adequately respond to increased housing demand with critically-needed new supply of rental housing; and

Whereas rent regulation harms individual apartment communities by limiting revenues that could be reinvested back into the property or used for rehabilitation; and

Whereas rent regulation harms local governments by undermining property values, reducing the potential for property tax revenue and increasing fiscal pressure on the municipalities to supplement revenue through other means; and

Whereas rent regulation necessitates the creation of government-run administrative bodies that divert public money away from the production of rental housing, communitywide infrastructure improvements and community services; and

Whereas, rent regulation harms local economies by stunting the economic and job creation contributions of apartment housing and its residents; and

Whereas rent regulation benefits anti-growth, "Not In My Back Yard" advocacy organizations that are focused on limiting new development not on improving the housing opportunities of low- and moderate-income families.

Therefore be it resolved that the National Apartment Association opposes all forms of rent regulation as a strategy to respond to affordability concerns; and

Therefore be it further resolved that the National Apartment Association supports policies which focus on enabling greater development of housing as the solution to affordability and supply concerns.

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CURRENT RENTAL AND SALES MARKET



BY JOHN CARONNA

From personal experience, we were easily able to rent our 1200 square foot two bedroom, one-and-a-half bath in Adams Point, Oakland. It appears that young professionals with good jobs have no problem paying the higher rents. They want space, privacy, and location. We've had a harder time, and less interest in our standard two bedroom, one bath, which is a 1,000 square foot unit in the same building. For both units, we are asking \$3 per square foot for the monthly rent. It may be that there is a lot of inventory and competition for the standard two bedroom.

On the multi-unit sales, the market appears strong for well-maintained

buildings, and even stronger where the well-maintained apartment is in a desirable neighborhood. We have seen multiple offers on the well located, well maintained properties. Buyers are being aggressive on their offers with these properties.

For properties that are not well-maintained, however, we are seeing price reductions and the tendency for rental properties to sit on the market. It's now more important than ever to maintain and upgrade upon tenant turnover. Buyers are looking for good current returns, with upside that will reward the owners over mid to long term ownership.

The job market and leasing in commercial space in Oakland is very hot right now. The buildings under construction are far along and close to being fully leased. With thousands of new jobs coming to Oakland, we expect continued demand for our apartments and slow, steady growth.

It was recently announced that Kaiser Permanente is going to build a high rise for their headquarters in downtown Oakland. This will bring a few thousand more jobs and continue to build demand for housing in the East Bay, with Oakland and Berkeley continuing to lead the way.

- **John Caronna** is Vice President at NAI Norcal. He specializes in multi-units sales in Alameda and Contra Costa counties. He owns and manages multi-unit properties for over 20 years. He can be reached at: Jcaronna@nainorcal.com, 415.531.5225.

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EBRHA's continued efforts to have open dialogue with Oakland's city officials, Rent Adjustment Program's (RAP) staff and other real estate related organizations is starting to gain traction! While it's too late to undo the passing of Oakland's Measure Y, which repealed the exemption of owner-occupied duplexes and triplexes from Just Cause Eviction and Rent Stabilization, going forward EBRHA will participate in roundtable discussions with other stakeholders in the community on proposed housing related ordinances.

Thanks to Oakland Council Member Larry Reid, a roundtable with rental property advocates and associations, tenant advocate organizations, legal service representatives, city staff, and housing consultants was held on June 11, 2019 at City Hall. As a result of the controversy and debate on Measure Y, it became very clear that going forward, all housing related measures need input from industry experts. As city officials allow involvement by all housing stakeholders, they will be more informed and will be able to create better housing policies that will also address housing inequity.

Housing inequity is also related to job inequity, which primarily and historically impact low to moderate income, minority and senior residents. It is the objective and expectation of all the roundtable participants that going forward, suggestions and ideas on developing better housing policy will produce more equitable outcomes for rental property owners and tenants. EBRHA's continued efforts to collaborate, educate, inform, attend and participate in city meetings and hearings is necessary for the Association to remain strong and to provide the highest level of service to its members. If you are a rental property owner, your participation and involvement is welcomed!



Oakland Rotary
Student Food Bank,
Scholarship Presentation
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of her Term as President of the
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MEMBER NETWORKING MIXER

Mixers provide EBRHA members with an opportunity to learn and network with other members, staff and board. Join us for hosted appetizers and a no-host bar.

Date: Thursday, July 25
Location: Aisle 5 -
3320 Grand Ave,
Oakland
Time: 5:00 pm - 7:00 pm



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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.

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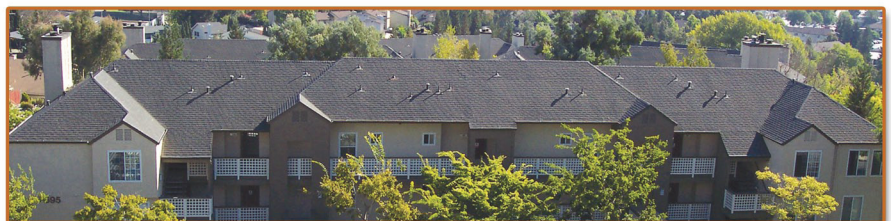
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UPCOMING WORKSHOP

Rental Property Management (RPM) 102

DATE & TIME

WEDNESDAY, JULY 17, 2:00 P.M. - 3:30 P.M.

PRESENTED BY

CARMEN MADDEN, EBRHA TREASURER



PRICE

FREE TO EBRHA MEMBERS, NON-MEMBERS \$69

TOPICS

Notices, Terminations, Security Deposits & Abandonment

TO SEE EBRHA'S FULL CALENDAR OF EVENTS, TURN TO PAGE 32 OR GO TO WWW.EBRHA.COM

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community calendar

EVENTS & CLASSES

July

TUESDAY, JULY 9TH

Small Property Roundtable

Presented by Wayne Rowland, EBRHA President
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
4:00 p.m. - 5:30 p.m.

WEDNESDAY, JULY 17TH

Rental Property Management (RPM) 102

Presented by EBRHA Board member Carmen Madden
Topics: Rental Agreements & Addenda, Rent Control vs. Rent Regulation, Habitability Issues & Managing Tenancy.
Free to EBRHA Members, Non-Members \$69
2:00 p.m. - 3:30 p.m.

SATURDAY, JULY 20TH

EBRHA Member Meeting

Topic: Seismic Consultation Presentation
Presented by: Larry Guillot of Quake Prepare
Legal Q&A -- Brent Kernan, Board Secretary
Enjoy a complimentary continental breakfast
EBRHA Members Only
Networking 9:30 a.m. | Meeting: 10:00 am - Noon

THURSDAY, JULY 25TH

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
5:00 p.m. - 7:00 p.m.

AISLE 5

WEDNESDAY, JULY 31ST

Property Management Q&A

Presented by Judy Shaw, EBRHA board member
Come and get answers to property management questions from expert Judy Shaw, EBRHA Board Member
EBRHA Members Only
2:00 p.m. - 3:30 p.m.

August

There will be no events or seminars scheduled for the month of August. Please check the EBRHA website for September Events.



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Oakland



ANNUAL ALLOWABLE RENT INCREASE

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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

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

*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

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.



FOR FURTHER INFORMATION CONTACT:

Berkeley Rent Board

2125 Milvia Street
Berkeley, CA 94704
510.981.7368 | www.ci.berkeley.ca.us/rent

vendor directory — CONTACTS, PRODUCTS & SERVICES

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The Lee Accountancy Group, Inc.
Jong H. Lee, CPA | 510-836-7400
jhlee@theleeaccountancy.com

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

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

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Joe Spallone, MAI | 510-601-1466
www.accessappraisal.com

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

ASSOCIATIONS

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Julie Taylor, CAE | 510-893-8780
www.bomaoeb.org

Oakland/Berkeley Association of Realtors
Davina Lara | 510-836-3000
oaklandberkeleyaor.com

Oakland Chamber of Commerce
Barbara Leslie | 510-874-4808
www.oaklandchamber.com

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www.bornsteinandbornstein.com

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www.dapesq.com

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www.ericksenarbuthnot.com

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www.friedwilliams.com

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malcolm.stanley@harbro.com

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Our membership consists of more than 1,400 rental housing owners, property managers, attorneys and other service contractors. Altogether, EBRHA represents over 20,000 rental units, and serves over 25 cities throughout Alameda and Contra Costa counties.

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- Annually updated legal forms, including forms online 24/7
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ad index

PRODUCTS & SERVICES

APPLIANCE PARTS & SALES	
Appliance Parts Distributor	3
ATTORNEYS	
The Evictors	47
Fried & Williams LLP.	22
The Shepherd Law Group	39
CARPETING & FLOORING	
Bay Area Contract Carpets, Inc.	22
CONSTRUCTION	
West Coast Premier Construction	38
ELECTRICAL SERVICES	
Complete Electric	39
ENGINEERS	
Earthquake and Structures, Inc.	39
West Coast Premier Construction	38
LAUNDRY	
Wash Multi-Family	22
LENDERS	
JPMorgan Chase Bank	35
PLUMBING	
Albert Nahman Plumbing	37
PROPERTY MANAGEMENT	
Maisel	47
PROPERTY MANAGEMENT & SALES	
Beacon Properties	23
RENT CONTROL CONSULTANTS	
Liz Hart	23
ROOFING SERVICES	
Frank Fiala Roofing.	37
General Roofing Co.	38
WATERPROOFING	
Applied Waterproofing Systems	22

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