

# RENT CONTROL 101

## ALL YOU NEVER WANTED TO NEED TO KNOW ABOUT BERKELEY'S RENT CONTROL PROGRAM

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1. **INTRODUCTION** (Don't fight it. Rent control is here to stay. Know the rules. Remain alert. Stand firm when you can. Learn how to prosper under rent control.)
2. **THE MECHANICS OF RENT CONTROL**
  - 2.1. **REGISTRATION**
    - **EXEMPTIONS**
      - Exemptions – Complete
        - Golden Duplex Exemption
        - Owner-Share Exemption
        - Non-profit Co-op
        - Transient (<14 days, hotel tax paid)
      - Exemptions – Partial
        - Costa-Hawkins SFR/Condo Exemption
        - Section 8 Exemption
        - New Construction Exemption
        - Tenant not in occupancy
        - Other Exemptions
      - Establishing Exemption
        - Administratively
        - By Petition
      - Strategic Exemption Creation
        - Collapse to SFR
        - Condo Conversion / sale
        - TIC Sales

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- **FORMS**
  - Initial Registration Statement
  - Amended Registraton Statement
    - For Exemption, re-registration
    - For Change of Owner Name, Address
  - Vacancy Decontrol Form
    - Services, too
  - Unit Status Form
  
- **CONSEQUENCES OF NON-REGISTRATION**
  - Penalties
  - No AGA
  - No Evictions
  - Rent Withholding

## 2.2. RENT INCREASES

- The AGA (65% of CPI)
- Increases By Petition
  - Capital Improvements / Offset Policy
  - Extra Tenants
  - Change In Space Or Services
  - Historically Low Rent
  - Fair Return on Investment
  - Eligibility Petition
  - Pied-a-terre Petition
  - Restoration of AGAs
- Vacancy Increases – The Main Game
- Exceptions:
  - Prior Eviction (the land mine clause)
  - Change in terms of tenancy that causes departure
  - Opt-Out from Section 8 – 3 years
  - Habitability Citation
  - Constructive Eviction
- On-Line Data Base - Useful
- 305 Rent History Printout – Useful

## 2.3. COUNSELORS – consult, listen, evaluate, get second opinion

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## 2.4. HEARINGS – to be avoided when possible, managed when not.

- Hearing Examiners ... LM, KL, DH
- Paperwork issues
- Continuances
- Preparation
- Documentation
- Best posture at hearing: professional, knowledgeable, non-confrontational
- Representation

## 2.5. CERTIFICATION (mostly moot now)

## 2.6. TENANT PETITIONS

- Non-Registration / Rent Withholding
- Overcharges
- Service Reduction
- Substantial Deterioration
- Reduction in Number of Tenants Allowed

## 2.7. SECURITY DEPOSITS

- State Law
  - Up To 2 x Rent (3x if furnished)
  - Return Or Account Within 3 Weeks
  - Inspection Requirement
- Berkeley Law
  - Applies To Most Exempt Units As Well
  - Interest On Deposits
- New Security Deposit Option for 2009
  - Conditions, Restrictions, Documentation
- In roommate situations, no requirement to split the deposit when one tenant leaves
- Pet deposit is OK, negotiable, no limit

## 2.8. SAFETY INSPECTION PROGRAM

- Habitability Problems – Consequences
- Annual Inspection Required – a good idea anyway
- Gas Appliance Inspection Required
- It's Good Business
- Avoiding Liability
- The Habitability Defense

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## 3. TENANT RELATIONS

- Tenant Rights - extensive
- Best Practice Regarding Tenants
- Not friends, not enemies
- Tenant Petitions
- Problem Tenants: The 90-10 Rule
- Owners' Right To Enter

## 4. EVICTIONS [the third rail of Berkeley politics, and remember that judges are elected]

- Non-Payment Of Rent
- Owner-Occupant Evictions
  - Measure Y (Section 9) Evictions (hard)
  - Owner-Return (Section 10) Evictions (easy)
- Eviction For Cause
  - Non Payment - Yes
  - Lease Violation – Maybe, if violation truly significant and unsolvable
  - Drug Use – No
  - Criminal Activity – No
  - Refusal to sign rental agreement – probably not
  - Damage to Unit – possible if severe
  - Tenant disturbing the peace – possible if outrageous
  - Sale of Property – no
  - Foreclosure - no
- Temporary Eviction For Code Work
  - Application Process
  - Enforcement Process
  - Timing, Cost
- The Habitability Defense
- Ellis Evictions – The Nuclear Option

## 5. LONG TERM STRATEGIES

### 5.1. Vacancy Decontrol – The Main Game

- Catch Hidden Subletting
- Catch Non-Residential Use
- Never threaten OOX eviction
- Choose Tenants Wisely
- Observe Discrimination Prohibitions

### 5.2. Value follows bedroom count

- 1-BR to 2 on Euclid, Fairview
- 2-BR to 5 on Fairview
- Studio + Garage = 2-BR

### 5.3. TIC Sales

- No city involvement

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- No inspection requirement
- Need a good agreement
- Cautions ...

## 5.4. Condominium Conversion

- Affordable Housing Fee (changing in 2009)
- Exemption rules (changing in 2009)
- Work without permits / Disclosure
- Life Safety Standard
- Cost - \$25,000 ++ for 2-4 units
- DRE for 5+
- The math regarding conversion

## 5.5. Buyouts

- Perfectly legal
- The math is often favorable

## 5.6. Rental on the Short Term Market

- Furnished
- High Quality Units
- Craig's list, CAL rentals, Sublet.com, extended stay, corporate housing
- Beware the B&B prohibition

## 6. TENANT PROBLEMS / PROBLEM TENANTS

### 6.1. Illegal Sublets

- Whole Unit Sublet
- Housemate Sublet

### 6.2. Tenants Who Live Elsewhere

- Occupancy Petition (office, storage, or P-a-T use)
- Eligibility Petition (subtenants left behind)

### 6.3. Rotating Roommates

- The Sublet Game – the last remaining original tenant (ABC, ABD, ADE, DEF)
- Paperwork: Replacement Tenant Addendum, Multiple Tenant Agreement
- Original T. v. Replacement T.
- 30-day deadline
- Only accept \$\$ from leaseholders

### 6.4. Pack Rat Tenants

### 6.5. Complainers

### 6.6. Take-Over Tenants

- Service reductions
- Eliminate management relationship
- No master-tenant arrangement
- Wing-clips

### 6.7. “Professional Tenants” may require multi-faceted strategy

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## 6.8. Problems With Entry

## 6.9. Projection of unresolved parental issues onto property owner

## 6.10. Tenants who take advantage of RSB rules

## 6.11. Tenants from Hell (all of the above)

## 6.12. Owners' creation of tenant problems – its bilateral

## 7. MANAGEMENT UNDER RENT CONTROL

- Remain in control of the property at all times
- Use management company if necessary
- Summertime lease termination plan
- City of Berkeley Business License Requirement
- Use a Competent Rental Agreement
  - Right of entry for inspections
  - Right to take pictures
  - No attorney fee clause
- Do Require Application Form
- Do Credit Check Applicants
- Do call former owner (and former-former owner)
- Pay Interest on Deposits in December of Each Year
- Keep Good Records
- Know your tenants / be alert to tenant changes
- Go the Second Mile, but stand firm at the Third Mile
- Follow the 80-20 Rule
- Improving Units Between Tenants is A Good Strategy
- Inspect annually, and keep the forms

## 8. BUYING RENTAL PROPERTY IN BERKELEY

- Due diligence:
  - check the leases
  - check the RSB file
  - check especially for owner-occupant evictions (land mine)
  - get estoppels
  - check the building, the zoning situation, the permit file
  - do a thorough, personal inspection in addition to a contractor's inspection.
- Financial diligence:
  - Do the numbers carefully
  - Do realistic financial projections
  - Will it cash flow?
  - Are there upside potentials?
  - What are the carrying costs?