



A PUBLICATION OF THE ALBANY PROPERTY RIGHTS ADVOCATES

# Albany Property Owner News

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## Costa-Hawkins Threatened

by Peter Campbell, APRA Board Member

The supporters of statewide rent control are already out on the streets, gathering signatures to put the repeal of Costa-Hawkins Rental Housing Act on the ballot later this year. The pitch is to authorize statewide rent control. Make no mistake about it; the pro-rent control advocates are serious about removing the rest of your rights as a rental provider.

As you undoubtedly know, many communities throughout California have enacted rent control. You have to look no further than Berkeley, Oakland or San Francisco to see extreme examples of rent control. Just in the past two years Richmond has implemented a draconian, totally one-sided ordinance that effectively removes all property rights from property owners, and even rolled rents back to 2015 levels. Efforts have been made to enact rent control in many other Bay Area cities in recent months and years, some successful and others less so. Several cities have enacted "rent mediation" ordinances, which APRA views as a form of rent control.

Albany is proposing such an ordinance, and in spite of our best efforts, it is likely it will be approved and put into place by the end of this year or early next year. APRA has been

opposed to this and any other form of rent control since the beginning of the City's discussion of this topic. The City claims their effort is not rent control, merely a forum for discussing and resolving rent disputes. We know that once this program is put in place the tenant groups will feel emboldened and will push for more.

So what can you do about it? First, support APRA's efforts to fight rent control in all its forms in Albany. Second, learn about the Costa-Hawkins Act and how it protects property rights of all property owners. The Costa-Hawkins Act prohibits rent control on single family homes and condominium units. It prohibits rent control on properties built after 1995. Following is an excerpt from Wikipedia explaining Costa Hawkins.

"The Costa-Hawkins Rental Housing Act ("Costa-Hawkins") is a California state law, enacted in 1995, which places limits on municipal rent control ordinances. Costa-Hawkins preempts the field in two major ways. First, it prohibits cities from establishing rent control over certain kinds of residential units (e.g., single family dwellings, and newly constructed units, which are both deemed exempt). Second, it prohibits municipal "vacancy control", also called



### Albany Represented

APRA Board Chairman Sam Sorokin and Board Member Elaine Stelton voice their opposition to the Costa-Hawkins Rental Housing Act in Sacramento in January.

"strict" rent control.

The act prohibits rent control on single family homes, condominiums, and any building constructed after 1995 (the date of the passage of the act). In addition, for cities with existing rent control, their rent control ordinances are limited to anything constructed before they passed their rent control law. For example, this means that *(continued on page 4)*

# APRA to Participate on Rent Mediation Task Force

by David Herzer, APRA Secretary; Peter Campbell, APRA Board Member and Ian Bennett-Goldbert, APRA Board Member

At the Albany City Council meeting on January 8, 2018, Council directed Staff to prepare a draft Rent Mediation Ordinance for non-binding rent mediation (Draft Ordinance) and to form a Rent Mediation Task Force composed of two representatives each from the Albany Property Rights Advocates (APRA), the Social and Economic Justice Commission (SEJC), and the Diverse Housing Work Group ((DHWG). The draft Ordinance may be modeled after aspects of rent mediation ordinances in San Leandro and Union City. Staff was directed to prepare the Draft Ordinance before the meetings of the Task Force. The function of the Task Force is to review and make recommendations to Staff concerning modifications to the Draft, pointing out areas of agreement and disagreement.

The initial Task Force meeting is scheduled for March 15, 2018 at 5 pm in the City Council Chambers in Albany City Hall. If needed, there will be a second meeting at 5 pm on March 20, 2018 in the Council Chambers.

After the Task Force meetings, Staff will then consider the recommendations and modify the Draft taking into consideration the recommendations received. A revised draft will then be presented to Council with areas of agreement and disagreement noted. Council will then direct Staff to finalize the Ordinance which will then come back to Council for final approval. Council estimates the timeline from the January 8th meeting to final approval to be about 6 months.

APRA has prepared and submitted to the City a summary of the major positions of APRA regarding the elements of a Mediation Program and a detailed sample ordinance that would be acceptable to APRA. While agreeing to non-binding mediation, APRA maintains concerns regarding the potential for any sort of program to spawn into binding rent review (which is rent control) or any derivative of the same, which necessarily includes so called tenant protection ordinances ('just cause'), and will continue to fight diligently to prevent the introduction of any such damaging elements into our community as every socio-economic and empirical study of which APRA is aware, has consistently shown that rent control results

in overall increases to rental rates in available housing over time and that just cause evictions decrease the availability of affordable housing.

Conversely, SEJC, despite masquerading as a non-partisan public organization with an interest solely grounded in achieving real solutions to the perceived housing crisis, continues to pursue its politically motivated goal of a complete rent control ordinance and even when faced with clear instructions from the Council that the Mediation Program is not to be binding nor to include any other aspect of rent control, SEJC continues to stump for major elements of the program to include implementation of just cause, to fix a trigger at as low as 65% of the CPI (which translates to a 2% yearly increase threshold) and for the entire process to be binding (which means that the program would actually be an arbitration, e.g. rent control).

So while a mediation ordinance may be inevitable, APRA will continue to fight for the protection of the interests of Albany property owners and indeed the community at large by introducing sensible commentary and argument gained from a wealth of experience in this industry while vehemently opposing the politically motivated arguments of groups that if given their way, would have laws implemented to address issues that they themselves don't even understand.

So while these organizations such as the members of the Social and Economic Justice Commission will continue to pursue their self-serving and misguided agenda while bemoaning the fact that their own lack of competence and even-handed approach to the issues as resulted in other stakeholders being formally elevated to an equal stance in the discussion, APRA will be there to educate the Council and the community on the issues and support sensible program elements that can actually work without risking the disastrous impact of a rent control and just cause ordinance and the resulting loss of affordable housing availability in and degradation of our great city.

APRA will keep you informed concerning developments in the above process. It will be very important that all Albany rental

property owners make a concerted effort to turnout for Council hearings when the Ordinance is submitted to City Council. If you have not already done so, please send your email information to us at [info@albanypropertyrights.org](mailto:info@albanypropertyrights.org) so we can keep you advised of developments in this critical matter. Whatever the city ends up doing, it will have major impacts on how you run your business, and upon your autonomy. Be sure we know how to contact you about this vitally important matter. If you have questions about how this is important to you, please email us at our email address: [info@albanypropertyrights.org](mailto:info@albanypropertyrights.org).

We need your help to battle these forces and look forward to hearing from you.

## Maximizing Revenue through Zero Vacancies

by Sam Sorokin, APRA Board Chairman

You just showed your available apartment to wonderful prospective residents. They submitted an application, you screened and qualified them and it is time to put together the rental agreement. The question is what type of rental agreement should you insist on? A fixed term lease or Month to Month?



Most things a property owner cannot control. There will be an emergency call on Friday at 5 pm, the rent sometimes arrives late and the city will increase the garbage rates. But you can control when your resident has the right to move out.

With a month-to-month lease in non-just cause cities like Albany, both parties can give notice to the other to move-out. But most property owners want their apartments filled 12 months a year and they usually only raise rent once a year if they do so at all. So there typically aren't many reason why the Property Owner would want to give notice. On the other hand, a resident may have lots of reasons to give notice to move. They may have a change in job, change in relationship or simply want a different place, so the Month to Month lease (*continued on page 4*)

# Dos and Don'ts of Handling a Tenant Dispute

by Ian Bennett-Goldberg, APRA Board Member

As property owners, we often know how to handle any number of issues that commonly arise. Whether it be leasing practices, maintenance, day to day management, vacancy turn over or the other sorts of issues that come part and parcel with having a rental property. What is less common however, is handling a tenant dispute, and because this is an area far less tread for many owners, it is equally common for owners to make a problem or potential problem far worse and far more complicated and expensive to resolve than it ever needed to be.

To avoid such pitfalls, here are some basic tips that every rental property owner should consider before attempting to address an active or brewing tenant dispute.

## Dos

### 1. Listen to what your tenant has to say.

By simply hearing somebody out and paying attention to what is being said, not only can you identify potential resolutions to the issue, but you may also pick-up on inaccuracies or weaknesses in the position being taken, and in any case, it is always better to allow someone to be heard because sometimes that may be all the dispute is really about.

**2. Keep good records.** For many property owners the biggest problem in a tenant dispute is lack of records pertaining to maintenance, rent ledgers, leases, inspections, etc. While the majority of matters do not end up in court and only a small fraction of those actually go to trial, a lack of well-kept records can not only make a matter difficult to understand and resolve, but can prejudice the interests of a property owner in the event such material is actually needed as evidence.

**3. Stay aware of and compliant with local requirements.** One of the single biggest traps for the unwary property owner is facing a meritless claim that all of sudden gains traction because one or more violations of a local ordinance or code comes to light. For example, in an eviction for failure to pay rent, the existence of uncured code enforcement or abatement orders is frequently fatal to an otherwise valid and enforceable claim. Not

only is compliance with required codes a necessary aspect of having an actionable position, but in many cases, knowledge of these codes can be a huge time and money saver because it allows a property owner to manage more effectively by knowing what needs to be complied with, as well as how and when.



**4. Adhere to the terms of your lease and your rights under the law.** Leases are contracts and terms in them are there for very good reasons. The same can be said for rights afforded to rental property owners under the California Civil Code and local ordinances where applicable. Know the terms of your lease and know your rights and limitations under the laws that apply to you and then adhere to those terms and requirements, and where you can, apply and enforce them strictly yourself. All too often, avoidable disputes happen when a property owner simply lets something slide or compromises their position simply to 'be nice' without making an appropriate reservation of rights. Doing so defeats the purpose of having contractual terms and property owner rights in many cases. This doesn't mean that as a property owner one has to be heartless or confrontational, it simply means that as owners, consistency and clarity are key to having tenant relationships which are less likely to devolve into conflict and where a conflict does arise, rights and terms that might be essential to resolving the matter, have not been undermined or waived.

## Don'ts

**1. Don't be reactive.** If and when the unfortunate event of a dispute does arise, or seems to be brewing, pretty much the worst thing that can be done is to be reactive. This seems like a no-brainer, but you would be astounded at how often property owners do or say (or worse, write) things that in a subjective moment may seem sensible, but ultimately come back to haunt them.

Instead, when faced with a dispute, take a deep breath, step back, think about your position and then, and only then, respond if and as appropriate, and if you are at all uncertain as to how to respond, get help.

### 2. Don't try to be your own lawyer.

Attorneys get paid for a reason and the good ones are often just as effective at keeping clients out of disputes as they are at resolving them. Don't be afraid to seek legal advice. At the end of the day, your rental property is often your greatest asset, and even if legal advice or representation may seem daunting or expensive, trying to take a matter into court yourself can very quickly turn a small problem into something much more complex and much more expensive to ultimately solve.

**3. Don't ignore your obligations.** This is fairly close to the concept of not being reactive, but it is surprising how frequently a property owner believes that once a dispute arises or a tenant breaches a lease or otherwise breaks the law, that ownership or management no longer has the typical obligations to that tenant that they otherwise would. This is almost always not the case. For example, a tenant being evicted for failure to pay rent still has a right to have repairs timely assessed and addressed, even though legal action may be pending, and where a legitimate habitability problem may arise, failure to address it may even create a defense where one did not exist before.

**4. Don't put things in writing unless you know what you are doing.** On the one hand (as discussed above) keeping good records is key to both avoiding as well resolving disputes, but on the other hand, putting too much in writing or sending communications without first carefully thinking about and understanding how they might impact your own rights and position, can be disastrous. For example: In non-rent control jurisdictions, rental property owners can terminate most tenancies without any reason so long as 30 days' notice is given for a periodic tenancy under a year and 60 days' notice is given for a periodic tenancy over one year. However, if a reason for doing so is communicated in writing to a tenant, this may create a basis for that tenant claiming retaliation in the event he or she does not want to leave. This is not to say that property owners and tenants should not have open and honest communications with each other; quite the opposite, that is almost

(continued on page 4)



## APRA Board Votes to Decrease Membership Dues

At the last APRA board meeting, the Board voted to decrease the yearly APRA membership dues from \$80/unit/year to \$60/unit/year. The membership dues will cover the period from March 1, 2018 through February 28, 2019.

Members should expect to find a correct 2018-2019 membership dues billing statement accompanying this newsletter in postal mail.

Affiliate members who are interested in joining APRA but do not provide rental housing in Albany are encouraged to do so. Membership dues for affiliate members are a flat \$60/year.

## Vendor Registry

APRA is seeking input from members to develop a registry of rental property vendors, such as plumbers, electricians, cleaners, painters and the like. If you have some preferred vendors and would like to submit them for our registry, along with a brief testimonial, please send them to us!

### Contact Us!

#### Website

<http://www.albanypropertyrights.org>

#### By e-mail

[info@albanypropertyrights.org](mailto:info@albanypropertyrights.org)

#### By postal mail

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Albany, California 94530

## Costa-Hawkins Threatened

*Continued from page 1*

only buildings older than 1979 can be rent controlled in San Francisco, and older than 1980 in Oakland and Berkeley, the years those cities passed their rent control laws. If an apartment is under "vacancy control", the city's ordinance works to deny or limit an owner's ability to increase its rent to new tenant(s). It works this way even in cases where the prior tenant voluntarily vacated the apartment or was evicted for cause (such as failure to pay rent). In other words Costa-Hawkins, by now prohibiting "vacancy control" in the above circumstances,

mandates that cities allow an apartment owner the right to rent it when vacant at any price (i.e., usually the market price).

Rent control in California is largely the creation of its municipalities. This ability (as well as all powers) of city, county, and municipal governments both derive from and are limited by the federal and state constitutions, as well as federal and state laws. Costa-Hawkins is a key state statute enacted to manage the power of California cities to regulate their rental markets."

As you can see, the loss of Costa Hawkins would be a major blow to property rights in California and will of course do nothing to correct the underlying problem facing all of California, a severe housing shortage. Don't sign any of the petitions you may encounter while out in the community. Talk to friends and neighbors about the importance of defeating this miss-guided initiative. If you have not already done so, join APRA and support the work being done on your behalf. As mentioned above, APRA has been fighting for your rights since the beginning. So far, we have been successful in convincing the city that vacancy control is a bad thing. We have also been guaranteed that our voice will be heard in the upcoming discussions on how to write Albany's proposed Rent Mediation ordinance. While we would like to prevent this ordinance from being put in place, we realize this is probably not possible. The next best alternative is to be sure we have our input into the process.

## Dos and Don'ts of Handling a Tenant Dispute

*Continued from page 3*

always a good thing, but as property owners, you need to remember that putting things in writing can sometimes have unintended consequences, and that in some cases it is simply better to just pick up the phone.

### About the Author

Ian Bennett-Goldberg is a member of the Board of Directors of APRA and an attorney with the firm of Weston Law Group, practicing in real estate, landlord-tenant and business law with an emphasis in litigation.

The statements made above are not intended as legal advice by either Ian, his firm, nor APRA, and are intended for informational purposes only. No attorney-client relationship or communication is created by these statements. Any reader seeking or interested in legal advice should

contact an attorney directly with their request.

## Maximizing Revenue through Zero Vacancies

*Continued from page 2*

really benefits the residents way more than the property owner.

Furthermore, if a resident gives notice at the wrong time of year like during the holidays, you may experience vacancy and will surely rent your place for much less. With a month to month lease the resident controls when they move. With a fixed term you do.

The question then is what should the term be? The answer depends on what month you rent your apartment. If you rent your place on October 1st then write a ten-month lease expiring on July 31st. If you lease it on April 1st then write a 14-month lease expiring on May 31st. The point is to have the lease expire at a time of year where there is the most demand. This way if your resident decides to move you will get the highest rent.

Finally, make sure that your lease terminates at the end and does not automatically convert to month-to-month. Instead, renew your lease for another year. Add a provision requiring the lease to be renewed at least 60 days in advance so that you get more time to lease your apartment. Then don't forget to contact your resident a few weeks before that to find out if they are staying or going. Finally, don't be flexible if they ask to go month to month. This is business.

*Don't miss the next*

**APRA  
Mixer**

Albany Community Center

1249 Marin Avenue, Albany  
Friday 15 April, 4:00-8:00 pm

Speaker: Sam Sorokin  
"Property Management Tips"

Bring your questions!  
Refreshments will be served.