

The Guide to Rent Control

1. Overview

In June 1980, Berkeley resident passed the City's first comprehensive rent stabilization law, known as the Rent Stabilization and Eviction for Good Cause Ordinance. ([Berkeley Municipal Code Chapter 13.76](#).) The Ordinance regulates most residential rents in Berkeley, provides tenants with increased protection against evictions and is intended to maintain affordable housing and preserve community diversity.

The Rent Stabilization Board, composed of nine elected commissioners, enacts regulations, sets the annual allowable rent adjustments, hears petition appeals, and administers a program to implement the Ordinance. Rent Board staff provide information and counseling to landlords and tenants, calculate and certify individual rent ceilings, conduct administrative hearings and issue decisions on landlord and tenant rent adjustment petitions, collect registration fees, and maintain a database of registered rental units. Owners of rental property covered by the Ordinance are required to register their units with the Board by filing registration statements and paying annual registration fees, which cover the program's cost.

In 1995, the California legislature enacted the Costa-Hawkins Rental Housing Act, which suspends rent control during a qualifying vacancy and reinstates it for a new tenancy. ([Civil Code section 1954.50, et seq.](#)) For the transition period between January 1, 1996 and December 31, 1998, owners were allowed to set new rents within prescribed limits. Now, under full "vacancy decontrol," owners may set a market rent for most tenancies beginning on or after January 1, 1999. The rent charged a new tenant becomes the new rent ceiling. Owners must register new rents with the Rent Board and may increase these rents for the sitting tenant only by an annual general adjustment or an individual rent adjustment granted through the Board's petition process.

2. Registration

Requirement to Register

All residential rental property in Berkeley is subject to the Rent Stabilization Ordinance unless it falls within one of the enumerated exceptions.

Owners of rental property covered by the Ordinance are required to file a registration statement that lists each unit's base year or initial rent and associated housing services. Owners must also pay an annual registration fee for each unit. ([Regulation 801](#).) The fee is due July 1st of each year.

For each tenancy that began between January 1, 1996 and December 31, 1998, owners were required to file a Vacancy Registration form that reflected the current and previous rent levels.

For tenancies beginning on or after January 1, 1999, owners must file Vacancy Registration forms that include the current rent, the occupancy level and the housing services provided. ([Regulation 1013 \(K\).](#))

When the status of a rental unit changes from covered to exempt or the reverse, the owner must file an Amended Registration statement within 60 days of the change and pay any associated prorated registration fees. ([Regulation 803.](#))

Exemptions

The following types of rental units are specifically exempt from some or all provisions of the Rent Stabilization Ordinance ([B.M.C.section 13.76.050](#)):

- Rental units owned by a government agency.*
- Units rented primarily to transient guests for less than 14 consecutive days and subject to the hotel tax.
- Non-profit cooperative housing owned and controlled by a majority of the residents.
- Units leased by the Berkeley Housing Authority, or to tenants assisted under the Section 8 or the Shelter Plus Care Programs.*
- Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.
- Rental units on a two unit property where one unit was, on December 31, 1979, and one unit is, currently, the principal residence of a 50 percent owner of record.
- Rental units where the tenant shares kitchen or bath facilities with an owner of record holding at least a 50 percent interest, provided the owner maintains his or her principal residence on the property.
- Rental units constructed after June 30, 1980, provided such units were not created by rehabilitation or conversion.*
- Units rented by non-profit accredited institutions of higher learning to tenants who are faculty, staff or students of the institution, or of a member school of the Graduate Theological Union, provided that the institution owned the unit as of January 1, 1988.
- Single family residences** first subject to the Rent Ordinance on or after January 1, 1996.*
- Single family residences** re-rented on or after January 1, 1996, unless: (1) the landlord evicted the prior tenant for owner-occupancy or by changing the terms of tenancy; (2) the landlord receives a financial contribution from a public entity in exchange for reducing the rent; or (3) the unit contains serious, cited code violations that have been outstanding for at least 6 months.*
([Regulation 508.](#))

*Although exempt from the registration and rent ceiling requirements, these units are not exempt from the security deposit and good cause for eviction provisions of the Ordinance.

**A single family residence is defined as a unit that can be sold separately from the title to any other dwelling unit, and includes condominiums that the original owner sells separately to a buyer for value. ([Regulation 508.](#))

An owner may obtain an administrative determination of a unit's status by filing a written request with the Rent Board. The owner may challenge the Board's determination within fifteen days by filing a Petition to Determine Exempt Status. ([Regulation 521.](#)) An owner is responsible for outstanding registration fees and penalties for an erroneous exemption claim.

A tenant may file a Petition for Rent Withholding for Failure to Register if s/he reasonably believes the property is not exempt or otherwise not properly registered. ([Regulation 1501.](#))

Consequences of Failing to Register

Owners may be unable to evict tenants. ([B.M.C. section 13.76.130 C.](#)) (Decisions on eviction lawsuits are issued by a state court judge and not by the Rent Board.)

Owners may be ineligible for all or part of an annual general adjustment. ([Regulation 1100.](#))

Owners may be assessed a late payment penalty. ([B.M.C. section 13.76.080 F.](#))
Tenants may petition the Board for authorization to withhold rent to compel registration. ([Regulation 1501.](#))

A landlord petition for a rent increase will not be accepted unless the affected property has been properly registered for 30 days. ([Regulation 1206.](#)) If during the petition process registration is deemed incomplete, any decision awarding a rent increase will be stayed until the owner has properly registered. ([Regulation 1277.](#))

3. Rent Levels

Calculating the lawful rent ceiling

Every residential rental unit in Berkeley that is not exempt from the provisions of the Rent Stabilization Ordinance has a lawful rent ceiling, which is the maximum amount of rent that a landlord may lawfully charge for the use or occupancy of the unit and any associated housing services, such as furnishings, parking or laundry facilities. Rent is not limited to money, but includes the fair market value of any goods or services that are rendered to a landlord in lieu of money.

Prior to January 1, 1996: lawful rent ceilings and housing services remained controlled even during vacancies. For units that have not had a vacancy since January 1, 1996, the lawful rent ceiling is the base rent plus subsequent Board-approved increases. ([B.M.C. section 13.76.100.](#))

The base rent is the lawful rent collected on May 31, 1980, or, for three and four unit buildings where one unit was owner-occupied, the lawful rent collected on December 31, 1981. For units that were first rented after May 31, 1980, the base rent is a good faith estimate of the May 31, 1980 median rent for comparable units increased by the intervening annual general adjustments (AGA's). The base rent includes all housing services provided when that rent was established. Any change in housing services from that provided when the base rent was established is grounds for an adjustment of the lawful rent ceiling. (See Landlord IRA Petitions and Tenant IRA Petitions, below.)

Since January 1, 1996: lawful rent ceilings may increase and associated housing services may change for a new tenancy. With some exceptions, under the Costa-Hawkins Rental Housing Act and [Regulation 1013](#), a landlord may set the initial rent for new tenancies beginning on or after January 1, 1996. The initial rent becomes the new rent ceiling, which may be changed only by Board-approved increases. Any change in housing services from that provided at the beginning of the tenancy is grounds for an adjustment of the lawful rent ceiling.

Between January 1, 1996, and December 31, 1998, a landlord could set an initial rent only when the prior tenancy was terminated voluntarily, by abandonment, or after eviction for non-payment of rent. The initial rent could not exceed 15 percent more than the prior rent in effect, and no more than two 15 percent increases could be imposed. Beginning January 1, 1999, landlords may set the initial rent at market unless the new tenancy follows a non-qualifying vacancy. (For information on how to determine a market rent, go to the Berkeley Rent Board [Mailbag](#) and select the topic "Vacancy Decontrol.")

Non-qualifying vacancies. [Civil Code section 1954.53](#) and [Regulation 1013\(B\)](#) prohibits a landlord from establishing an initial rent if the prior tenancy ended because of the landlord's actions. A landlord may not increase the rent for a new tenancy if the prior tenancy ended after the landlord:

- served a 30-day notice of termination (an exception is made for tenancies terminated for owner-occupancy prior to December 31, 1994, if the owner or qualifying relative thereafter resided at the unit continuously for at least two years);
- changed the terms of the tenancy, except a lawful increase in the amount of rent or fees. (For any tenancy that terminates within twelve months of a landlord's unilateral change in the terms of the lease, the change in the terms of the tenancy is presumed to be the cause of termination);
- engaged in harassment or other acts prohibited by law, or that constitute constructive eviction or a breach of the covenant of quiet enjoyment of the property;
- opted out of the federal Section 8 contract entered into before January 1, 2000, and the new tenancy begins less than three years from the date of the contract termination. (A landlord who opts out of a Section 8 contract entered into on or after January 1, 2000, that remains in effect for one year or more can raise the rent to market levels.)

Additionally, a landlord is not eligible to implement a vacancy increase for a unit that was cited by a governmental agency for serious health, safety, fire, or building code violations (except those caused by disasters) that remained uncorrected for more than 60 days before the vacancy.

You can [search the Rent Board's database](#) to find an apparent lawful rent ceiling for residential units subject to rent control. To find out how to have a rent ceiling certified, see [Certification of Rent Ceilings](#) below.

Rent ceiling increases

Rent ceilings may be increased by annual general adjustments (AGA's) or by amounts granted in an Individual Rent Adjustment (IRA) petition.

Annual General Adjustments (AGA's). Every year, by October 31, the Board determines the amount of AGA necessary to compensate landlords for increases in maintenance costs and for inflation. ([B.M.C. section 13.76.110](#) and [Chapter 11](#) of the Regulations.)

A landlord must be in compliance with the Ordinance and Regulations before implementing an AGA. This means that:

- The property is registered, i.e., the requisite forms have been filed and there are no outstanding fees or penalties,
- The rent charged is no more than the lawful rent ceiling, and
- The unit has no serious repair problems or outstanding housing code violations.

A landlord must give a tenant at least 30 days' written notice of the increase, in the format required by the Board's AGA Order. If a tenant has a fixed-term lease, unless the lease allows the increase, the landlord will have to wait until the expiration of the lease term to implement the AGA.

Annual General Adjustments since 1981

1981: 5% OR 6.2% if owner paid for space heating

1982: 9% plus, if the landlord paid for gas and electricity, including space heating, an additional increase as follows:

\$4: studio \$7: 1-bedroom \$9: 2-bedroom

\$10: 3-bedroom \$12: 4-bedroom \$16: house with 3+ bedrooms

Deferral bonus of 1% for each year the 1982 AGA is deferred.

1983: 4.75% OR 5% if landlord paid for electricity or gas

1984: 0%

1985: 2%

1986: 3% plus \$2.50 per month

1987: 3.5%

1988: \$25.00 per month OR \$15.00 per month for residential hotels

1989: 3% OR 3.5% if landlord paid for gas, electricity, or heating in the unit

1990: \$16.00 per month

1991: 4% OR \$17.00 per month, whichever is higher

11/1/91: 1991 Inflation Adjustment ("Searle" increase): 45% of the 5/31/80 rent
1992: \$26.00 per month
1993: \$20.00 per month
1994: \$18.00 per month
1995: 1.5 %
1996: 1%
1997: 1.15 %
1998: 0.8 %
1999: 1% OR \$8.00 per month, whichever is lower
2000: \$6.00 per month*
2001: \$10 per month plus an additional \$8 if the owner pays for all gas service to the rental unit*
2002: 3.5% OR \$30.00 per month, whichever is lower, plus an additional \$9.00 if the owner pays for interior space heating*

* AGAs for these years may not be implemented on any unit that had an initial rent established on or after January 1 of the previous year.

Landlord Individual Rent Adjustment (IRA) Petitions. Landlords may petition the Rent Board for rent ceiling increases, although with vacancy decontrol in effect, there is less emphasis on obtaining rent increases through the IRA petition process. Grounds for filing a landlord IRA petition include:

- increase in number of tenants from that which was allowed on May 31, 1980, or, for tenancies beginning on or after January 1, 1999, from that which was allowed at the beginning of the tenancy. ([Regulation 1270.](#))
- change in living space or housing services from that which was provided on May 31, 1980, or, for tenancies beginning on or after January 1, 1999, from that which was provided at the beginning of the tenancy. ([Regulation 1269.](#))
- historically low rent (HLR). ([Regulation 1280.](#))
- capital improvements. ([Regulation 1267.](#))
- adjustment and/or maintenance of net operating income (fair return). ([Regulation 1262](#), [Regulation 1264.](#))
- restoration of AGA's. ([Regulation 1278.](#))

Rent ceiling decreases

Tenant Individual Rent Adjustment (IRA) Petitions. Tenants may petition the Rent Board for reductions in the rent ceiling, and do so most commonly because of housing code violations, habitability problems, or a decrease in living space or housing services. ([Regulation 1269.](#)) The petition process can be used to obtain rent reductions to compensate for such problems and to motivate a landlord to correct physical defects or restore space or services. Other grounds for filing a tenant IRA petition are:

- illegally high rent, unrefunded security deposit ([Regulation 1271](#)), and unpaid security deposit interest ([Regulations, Chapter 7](#)).

- substantial deterioration of the unit, or failure of the landlord to provide adequate services. ([Regulation 1269.](#))
- reduction in the number of tenants allowed in the unit from that which was allowed on May 31, 1980, or, for tenancies beginning after January 1, 1999, from that which was allowed at the beginning of the tenancy. ([Regulation 1270.](#))

Hearings

After a tenant or a landlord files a petition, the opposing party has a right to object to the petition. If no objection is filed or if the petitioner does not request a hearing, and a hearing examiner determines that a decision can be rendered without testimony, the petition will be decided administratively, that is, without a hearing. Otherwise, a hearing will be held, in which an impartial hearing examiner takes testimony and receives written evidence on the issues raised by the petition. In either case, unless the parties enter into a settlement agreement, the hearing examiner will issue a written decision granting or denying the requested rent ceiling increases or decreases. A hearing examiner's decision may be appealed to the nine-member Rent Board. For more information and to review and download petition forms, go to [The Petition Process](#). IRA petitions and hearing procedures are governed by [B.M.C. section 13.76.120](#) and [Chapter 12](#) of the Regulations.

Certification of rent ceilings

Rent ceilings that have been certified or determined in a final Board decision on an IRA petition may not be changed retroactively unless there is evidence of intentional misrepresentation or fraud.

Rent ceilings for the majority of Berkeley's registered rental units were certified in 1987, after the Board issued Notices of Apparent Maximum Lawful Rents. A previous rent ceiling certification is usually irrelevant for any unit that has had a vacancy since January 1, 1996.

A landlord or a tenant of a unit for which the rent ceilings have not been certified, or who wishes to have the subsequent rent ceilings certified, may file a Request for Certificate of Permissible Rent Levels. There is no fee for a Certificate if the rent ceilings have never been certified and a nominal fee if they have.

A landlord or a tenant may challenge a Certificate by filing a petition appealing the Certificate. Go to [The Petition Process](#) for more information and forms.

4. Subletting and Replacing Roommates

Subletting generally

To sublet or sublease is to rent part of the premises to another person for all or part of the lease term, or to rent all of the premises to another for a portion of the lease term. Thus, a sublet exists where the original (or "master") tenant takes in a roommate whose

name is not on the lease and who pays rent to the master tenant, or where the master tenant rents the unit to another during the master tenant's absence. A master tenant remains obligated to the landlord to comply with the lease requirements. A master tenant taking in a roommate may not charge more than an amount substantially proportional to the space occupied by the subtenant ([Regulation 1003\(C\)](#)), and a master tenant subletting the entire premises may not charge a subtenant more than the rent lawfully due and payable to the landlord ([Regulation 1003\(B\)](#)).

A tenant may sublet a unit if the lease does not specifically prohibit subleasing. If the lease provides that subletting is allowed subject to the landlord's approval, the landlord may withhold consent only when he or she has a reasonable objection to the proposed subtenant. The proposed subtenant's financial responsibility or prior rental history are examples of reasonable objections.

Caution: Where specifically prohibited by the terms of the lease, subletting may be a violation of the lease and grounds for eviction. If you have questions about whether a lease allows subletting, you should seek legal advice.

Replacement tenants

A landlord generally must allow an original tenant to replace a roommate whose occupancy was authorized under the lease. If the lease requires the landlord's approval of a sublet, the landlord may object to a replacement tenant only if the landlord has a reasonable basis for doing so. If a landlord objects to replacement of a vacating roommate, the remaining tenant may petition the Board for a rent reduction. (See [Regulation 1270\(C\)](#).) A landlord who forces remaining tenants to vacate the unit by refusing to allow a replacement roommate is not entitled to a vacancy increase, because the vacancy was not voluntary.

Partial turnovers in tenancies -- when a vacancy increase may be imposed

A question often arises regarding when a landlord may implement a vacancy increase under Costa-Hawkins where several tenants rent a unit together, and are gradually replaced over time. The unit may never be entirely vacant during these changes in tenancies. A landlord may implement a vacancy increase (i.e., establish a new initial rent) by giving 30 days' written notice if: (1) there has been a complete turnover of original occupants; (2) none of the remaining occupants lawfully resided in the unit before January 1, 1996; and (3) the landlord has not accepted rent after receiving written notice from the last original occupant that he or she has moved out or will be moving out permanently. ([Regulation 1013\(O\)](#).) (Thus, if tenants hide the fact that the last original occupant has permanently vacated the unit, the landlord's acceptance of rent does not constitute a waiver of the right to implement a vacancy increase.) The landlord may defer the imposition of a vacancy increase for up to six months after receiving written notice of the last original occupant's departure, by agreeing in writing with the remaining tenants to do so.

The new group of tenants becomes a new set of "original" occupants to which the same rules regarding a vacancy increase will apply.

Under [Regulation 1013\(O\)\(5\)](#), where a landlord rents a unit and places only one tenant's name on the lease, but authorizes more than one tenant to occupy the unit, all tenants who occupy the unit within one month, with the landlord's express or implied permission, are considered "original occupants". This covers situations where a landlord interviews several prospective tenants, orally accepts a group of them, but has only one tenant sign the lease; and where a landlord has a lease with a single master tenant, who is allowed to sublet to several roommates. In either case, the landlord is not entitled to raise the rent simply because the signing tenant or master tenant moves out permanently.

5. Security Deposits - State and Local Law

State Law regarding security deposits

[Civil Code Section 1950.5](#) regulates residential security deposits, defined as ". . .any payment, fee, deposit or charge . . . used or to be used for any purpose, including . . . recovering rent defaults, repairing damages caused by the tenant, or cleaning. Money paid as the first month's rent isn't considered a security deposit, but money paid in excess of the first month's rent (including that which is called "last month's rent" is considered part of the deposit. Generally, a security deposit may not exceed two times the monthly rent for an unfurnished unit or three times the monthly rent for a furnished unit. It is unlawful for a lease or rental agreement to make a security deposit non-refundable.

Within **three** weeks after the tenant (or tenants) leave the unit vacant, the landlord must (1) furnish the tenant with written statement itemizing the amount of and purpose for which any part of the security was claimed and used; and (2) return any remaining portion of the security to the tenant. The landlord may claim only the amount that is **reasonably** necessary to (a) cover rent defaults, (b) repair damages a tenant or a tenant's guest caused other than normal wear and tear, (c) do necessary cleaning, and (d) if allowed by the lease, cover the cost of restoring or replacing personal property (including keys) or furniture, excluding ordinary wear and tear. Where several roommates live together and have paid a deposit, the landlord is not required to return the deposit until the unit is returned to the landlord vacant.

A tenant who does not receive the refund and accounting within three weeks, or disputes the amount claimed by the landlord, may sue the landlord for the disputed amount (in [Small Claims Court](#) if the amount is less than \$5,000) and up to \$600 in damages for the "bad faith retention" of (i.e., the unreasonable refusal to return) any security. In court, the landlord has to prove the reasonableness of any amounts retained.

A landlord who sells a rental property must either:

Transfer the deposit to the new landlord; or

Return the deposit to the tenant.

In either case, the selling landlord may deduct any proper amounts for lawful claims. If this is done, the seller must supply the tenant with an itemized accounting of the amounts deducted. If the seller transfers all or part of the deposit to the new landlord, the seller must also notify the tenant of the transfer, and the new landlord's name, address, and telephone number. All notices must be delivered to the tenant by first-class mail or personal delivery.

Berkeley law regarding interest on security deposits

The provisions of the Rent Stabilization Ordinance and the Regulations governing interest on security deposits ([B.M.C. section 13.76.070](#); [Regulations 701 - 706](#)) apply to all units that are required to be registered and to some units that are exempt from the Ordinance's registration requirements. Such units include: those constructed after 1980, single-family residences described in [Regulation 508](#), units owned or leased by the Berkeley Housing Authority; and units rented to federal Section 8 participants.

The Ordinance requires landlords to place security deposits in an interest-bearing account insured by the federal government and to return the earned interest to the tenants every December as a cash payment or rent rebate. After the tenant has vacated the premises, the landlords must pay the tenant the balance of any interest earned, along with the appropriate part of the security deposit.

A tenant who has not received a refund of security deposit interest by January 10 for the preceding calendar year may, after giving the landlord 15 days' advance written notice of intent to do so, deduct interest at the rate of 10 percent simple interest per year, from the rent. The landlord may instead refund the interest at the 10 percent rate before the deduction is to be made. ([Regulation 704.](#))

Landlords may not increase the amount of the security deposit for any tenant during the term of the tenancy, even if the rent ceiling increases during the term. ([Regulation 705.](#))

A tenant who does not receive a security deposit refund or accounting within three weeks of moving out may, instead of suing the landlord in court, file a petition with the Board to recover the amount allegedly owed. Go to [The Petition Process](#) for more information.

6. Evictions

Proceed with caution

Evictions are governed primarily by state law, but the Rent Stabilization Ordinance imposes additional requirements. Evictions are complex proceedings; a landlord must follow state and local law to the letter to successfully evict a tenant. Furthermore, a landlord's failure to follow certain procedures may entitle a tenant to substantial damages. Rent Stabilization Board counselors are available to help parties understand their rights and responsibilities, but they do not provide legal advice to landlords or tenants regarding eviction proceedings in court. Landlords and tenants are strongly

urged to obtain legal advice before filing an eviction action or contesting an eviction attempt. Consult the [Landlord/Tenant Local Resources](#) page for referrals and publications.

Eviction checklist - local requirements

The Ordinance imposes the following requirements (see [B.M.C. section 13.76.130 B, C and D](#)) in addition to state law procedures for evictions:

In the notice to quit or notice of termination, and in the summons and complaint (the lawsuit to evict):

- The landlord must specify one or more of the good causes for eviction listed below.
- The landlord must allege compliance with [B.M.C. section 13.76.080](#) (registration) for all covered units on the property (compliance means that all registration fees are paid and all registration forms are completed and filed), and with [B.M.C. section 13.76.110](#) (lawful rent levels).
- The landlord must allege substantial compliance with the implied warranty of habitability (no serious repair problems) for all covered units on the property.

The landlord must file with the Rent Stabilization Board a copy of the notice to quit or notice of termination, and of the summons and complaint, within ten days of the date they are given to the tenant(s).

Note: As of January 1, 2002, state law (Code of Civil Procedure section 1161) was amended to require additional information in three-day notices to pay or quit. See [Summary of SB985](#) for more information.

Good cause required

The "good cause for eviction" provisions of the Ordinance ([B.M.C. section 13.76.130](#)) apply to most rental units in Berkeley, including some units that are exempt from registration with the Board or from rent ceiling controls. Such units include: those constructed after 1980, single-family residences described in [Regulation 508](#), units owned or leased by the Berkeley Housing Authority, and units rented to federal Section 8 participants.

"Good cause" is any one of the following:

1. The tenant fails to pay rent to which the landlord is legally entitled, after receiving a notice to pay or move out within a period not less than three days (also known as a 3-day Notice to Pay or Quit).
2. The tenant continues to violate a material and valid term of the rental agreement after a written request to stop the violation.
3. The tenant willfully causes or allows substantial damage to the rental unit to occur, and refuses to pay or make sufficient repairs after being asked in writing to do so.

4. On the expiration of a fixed term lease, the tenant refuses to sign a new lease that is substantially identical to the expired one.
5. The tenant continues to disturb the peace and quiet of other occupants after receiving a written request to stop.
6. The tenant, after receiving a written request to cease, refuses to allow the landlord access to the rental unit during normal business hours to show, inspect or make repairs on the unit after receiving at least 24 hours' notice.
7. The landlord must bring the unit into compliance with the Housing Code by making substantial repairs that cannot be made while the tenant lives there. (See additional requirements below.)
8. The landlord has received a permit to demolish the unit.
9. The owner of at least a 50 percent recorded interest in the property, or such an owner's spouse, parent, or child, wishes to occupy the rental unit as their principal residence and there is or was, for 90 days before the tenant was given notice to vacate, no comparable unit available on any property owned by the landlord in Berkeley. (See additional conditions imposed by [Measure Y below](#).)
10. An owner or lessor wishes to move back into a rented or sub-leased unit as permitted in the rental agreement with the current tenant(s).
11. A tenant refuses to vacate temporary housing offered by the landlord after repairs to the tenant's prior unit have been completed.
12. A tenant engages in unlawful activity on the premises.

The sale of property, the expiration of a rental agreement, or a change in the Federal Section 8 status of a unit do not constitute "good cause" for eviction.

Before giving a tenant notice to vacate to perform substantial repairs, the owner must obtain all necessary permits. If, from the time notice is given until the tenant leaves the unit, the owner has other vacant units in Berkeley, one of these units must be offered to the tenant to occupy temporarily or permanently. If the repairs can be completed in 60 or fewer days and the tenant honors a written agreement to vacate the unit at no cost to the landlord (other than the abatement of rent during the repair period), the tenant cannot be evicted. Finally, the tenant must be given the option to re-occupy the rental unit once the repairs have been completed.

Measure Y, passed by voters as an amendment to the Ordinance in November 2000, prohibits evictions for owner or relative occupancy where either: (1) a tenant has lived on the property for 5 or more years and the landlord has a 10% or greater ownership interest in 5 or more residential units in Berkeley, or (2) a tenant is at least 60 years old or disabled, has lived on the property for 5 or more years, and the landlord has a 10% or greater ownership interest in 4 residential units in Berkeley. If all the landlord's units are limited by the above, an eviction for the owner or relative to move in is permitted where: the landlord has owned the property for 5 years and is at least 60 years old or disabled, or the landlord's relative is at least 60 years old or disabled.

Under Measure Y, the landlord must include, in the notice of termination, information about all Berkeley residential properties in which he or she has a 10% or greater ownership interest, and must always offer the tenant any unit that the landlord owns in Berkeley that becomes available before the tenant vacates his or her unit. (The rent for

the new unit will be based on the rent of the vacated unit with adjustments for differences between the units.)

Measure Y also requires the landlord to provide a \$4,500 relocation assistance payment to any low-income tenant who has resided in the unit for one year or more, if the tenant notifies the landlord and the Rent Board in writing, within 30 days of receiving the notice of termination of the tenancy, that he/she is claiming low-income tenant status.

The landlord must give the terminated tenant the right to re-occupy the unit when the landlord or his or her relative moves out. Also, when the landlord or his or her relative moves out, the rent for the next tenant will be limited to the prior rent ceiling and intervening AGAs.

Finally, if a landlord rescinds a notice of termination for owner or relative move-in, or stops eviction proceedings under Measure Y, and the tenant vacates within one year of the notice date, it is presumed that the tenancy terminated as a result of the notice, and the rent for the next tenancy will be limited to the prior rent ceiling and intervening AGAs. ([Reg. 1016.](#))

Ellis Act. This state law ([Government Code sections 7060 - 7060.7](#)) allows landlords to evict tenants in order to remove units from the rental housing market. (A local ordinance, [Berkeley Municipal Code Chapter 13.77](#), establishes specific procedures under the state law.) Generally, an owner must withdraw all units on a property in order to evict under the Ellis Act. Tenants must be given at least 120 days' notice; the notice period is extended to one year for tenants who are disabled or 62 years of age or older. An owner must pay a \$4,500 relocation benefit to tenants who claim and establish low-income status. Displaced tenants may request the opportunity to re-occupy the unit, on substantially the same terms as during their former tenancy, if it is re-rented within ten years of the withdrawal date. If an owner later re-rents a unit that was withdrawn under the Ellis Act, regardless of how much time has passed or to whom the unit is rented, the owner cannot charge more than the prior rent ceiling and intervening AGAs.

Wrongful eviction. Under the Ordinance, if a landlord evicts a tenant to perform repairs or demolish the property, and the repair or demolition is not initiated within two months, or if the landlord's claim was false or in bad faith, the tenant may sue to move back into the unit and be compensated for damages incurred. If the tenant can prove the landlord's conduct was willful, the tenant can recover the greater of \$750 or three times the actual damages. ([B.M.C. section 13.76.150 B.](#))

Under Measure Y, bad faith is presumed where a landlord evicts for owner or relative move-in, and the owner or relative does not move in within three months of the tenant's vacancy, or does not occupy the unit as a principal residence for at least 36 continuous months. ([B.M.C. section 13.76.130 A.9.g.](#)) Also, under state law, a tenant who can show an owner's fraudulent intent not to reside in the property at least six months may receive additional compensation. ([Civil Code section 1947.10.](#)) If a unit that was withdrawn under the Ellis Act is re-rented within two years of the withdrawal date, displaced tenants may sue for damages resulting from their displacement; if the re-rental occurs more than two, but less than ten years from the withdrawal date, displaced

tenants may sue for damages if the owner failed to offer them the opportunity to re-rent. ([B.M.C. § 13.77.040.](#))

The Eviction Process

Following is a chronological account of a typical eviction proceeding. Remember that the Rent Board does not provide legal advice about eviction lawsuits, and that the following process is governed by state law and subject to change.

Eviction Notice

The property owner gives the tenant a written three-day notice to quit (leave) or perform (e.g., pay rent or comply with the rental agreement), or a thirty-day notice of termination. For a three-day notice, days are counted starting with the day after the tenant receives notice, and exclude Saturdays, Sundays, and legal holidays. For a 30-day notice, if the 30th day falls on a Saturday, Sunday, or legal holiday, the tenant has until the following business day to vacate.

Property Owner Files Complaint with Court

After a three- or thirty-day notice expires without the tenant having complied, the owner may file papers with the court, called a Summons and Complaint for Unlawful Detainer, which continue the eviction process.

Tenant is Served with Summons and Complaint

A copy of the Summons and Complaint for Unlawful Detainer is served (delivered to) the tenant (usually by personal delivery).

Tenant Files Response

The tenant has five days to file a written response with the court. Saturdays and Sundays are included in counting the five days, but court holidays are not. If the fifth day falls on a Saturday or Sunday, the response may be filed the next court day. (If the tenant fails to respond in writing to the Summons and Complaint within the required time, then the property owner will probably win by default.)

Trial

If the tenant has filed a written response, a date is set for a hearing before a judge, or a judge and jury. Both tenant and landlord appear in court to present their cases.

If Property Owner Wins at Trial or by Default: The owner is awarded possession of the property, and the tenant may be asked to pay back rent. If the tenant does not move voluntarily, the owner asks the court to issue a writ of possession, which authorizes the sheriff to evict the tenant. The sheriff serves a notice on the tenant to move within five days. If the tenant does not move, the sheriff will escort the tenant from the property. The tenant may not return to the property.

If the Tenant Wins: The tenant stays in the unit.

Improper Landlord Actions

A landlord may not retaliate against a tenant for exercising his or her rights under the Ordinance or other laws. "Retaliation" can take the form of attempting to evict the tenant, increasing rent, refusing to renew a lease, or threatening to do any of those things. Tenant actions protected by law include reporting housing code violations or filing a petition with the Rent Board. A landlord's retaliatory motive is a defense to an eviction action.

"Self-help" evictions -- that is, forcing a tenant out of a unit without a court order -- are prohibited in California. It is illegal for a landlord to:

- remove exterior doors or windows,
- prevent a tenant's access to the rental unit by changing the locks,
- remove a tenant's personal property from the rental unit, or
- cut off utilities with the intent to deny the tenant use of the premises.

A tenant who is illegally evicted may sue to regain possession of the unit and for damages. A tenant should contact an attorney or tenants' rights group if the landlord takes retaliatory action or attempts to force him/her out without going through the eviction process.

How to Contact Us

Mail or visit:

Berkeley Rent Stabilization Board
2125 Milvia Street
Berkeley, CA 94704

Mail for Rent Board Commissioners should be sent to:

Commissioner (Name)
Berkeley Rent Stabilization Board
2125 Milvia Street
Berkeley, CA 94704

Phone: 510-644-6128

Fax: 510-644-7723

TDD: 510-644-6915

Web Site: <http://www.ci.berkeley.ca.us/rent/>

E-mail: rent@ci.berkeley.ca.us

Hours:

Monday, Tuesday, Thursday and Friday, 9:00 a.m. – 4:45 p.m.
Wednesday, 12:00 p.m. (noon) – 4:45 p.m.

General Calendar

January 1st: Annual General Adjustment (AGA) approved by the Rent Stabilization Board raises the lawful rent ceiling for eligible units

Early spring: Lawful Rent Ceiling Notices mailed to tenants and landlords

Late May: Billing mailed to landlords for annual registration fee

July 1st: Payment due from landlords for annual registration fee

October: Public hearings and final adoption by Rent Stabilization Board of the next Annual General Adjustment

Late November: Information mailed to landlords and tenants concerning next AGA

By December 1st: Most landlords give 30-day notice of implementing the next AGA on January 1st