



## **St. John & Associates**

2115 West Street

Berkeley, CA 94702-1947

510.845.8928 – Fax 510.845.1813

[www.stjohnandassociates.net](http://www.stjohnandassociates.net)

### **CAN NOTHING BE DONE ABOUT LOW RENTS?**

**Michael St. John, PH. D.**

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My clients often ask: "What can I do about my long term tenants paying low, low rents?" Many owners think the answer is, "Nothing. Wait for vacancies."

But that is not really the best answer. It is true that vacancy decontrol is the main game now, but when you have long term tenants who you fear will stay a lifetime there are strategies that you should consider before settling for low rents for what feels like forever.

The first strategy is to be vigilant as to who occupies your units. If your tenants move someone else in, you may be able to get a 10% rent increase for what the Rent Board calls "extra tenants". If the original tenants leave, leaving subtenants behind, you may be able to assert a vacancy event and take the rent to market ... so long as you act promptly. If it becomes apparent that your tenant is using the unit as a pied-a-terre or for business purposes, you may be able to achieve exemption from rent control under the new "pied-a-terre" regulation.

In all of these cases, vigilance is important. You have to know your tenants. Tenants have a significant financial incentive to maintain rent controlled rents, and many tenants will pull a scam if they see the opportunity. Tenants will sometimes try, for example, to pass a rent controlled unit on to a family member or a roommate. The former tenant continues to pay the rent. The owner is never told about the change. Don't let this happen! In the old days of restrictive rent control it didn't really matter who lived there. That is no longer true. It matters a lot. You have to maintain control over who lives there. And when a change in occupants happens, you have to move quickly to assert your right to decontrolled rents. Otherwise the Rent Board, in its wisdom, will tell you that you have lost the right to decontrolled rent by acting too slowly.

Another strategy is to petition for rent increases for planned or completed capital improvements. The Rent Board does an offset for amounts achieved by vacancy, so the timing is important. You may have to wait a year after a vacancy, then do the work, then take increases. Otherwise, capital improvement increases may be offset by vacancy increases. This offset policy is most likely illegal, but the Board will get away with it until someone takes the issue to court. In the meantime, we have to plan carefully to prevent offsets. If, on the other hand, you have completed major improvements, and if the vacancy increases have been relatively minor, the offset may not matter. In this case, there is no need to wait a year.

The list of improvements that qualify for capital improvements increases is far shorter than it once was, but the increases are now added to the permanent rent ceiling. They don't go on and then off, as they did several years ago. Capital improvement increases are therefore more valuable than they were in the past. Interior renovations to units no longer qualify, but capital improvements increases can still be achieved for new roofs, foundation work, seismic retrofits, energy-saving improvements such as double pane windows, security improvements such as security gates or intercom systems, exterior painting, new heating, plumbing, or electric systems, work pursuant to a termite report, and any improvement that adds space or significantly benefits tenants.

If your rents are extraordinarily low, it may be possible to petition for increases under the Historically Low Rent regulation. Maximum rents achievable by this route are not generous, but they are higher than some low, low rents.

It is sometimes possible to get low-income tenants on Section 8. This is a win-win for you and for the tenant. The tenant's rent goes down. The rent you receive goes up. The Section 8 list is closed right now, but it opens every once in a while, and is always open for emergency cases. There are circumstances in which an "emergency" can be managed to the owner's and the tenant's mutual advantage by involving the Section 8 program.

A final strategy that some owners have pursued is to buy tenants out. Everyone has his price, they say. Almost any tenant will move if offered a sufficient financial incentive. What drives buyouts is that tenants' valuation of their tenancy is almost always lower than owners' valuation of a vacancy. If a tenant is paying \$650, for example, for a unit that would rent at market for \$1,450, the value of a vacancy to the owner is something like \$100,000 at a cap rate of 10% or \$200,000 at a cap rate of 5%. Most tenants will agree to leave for far less than \$100,000. If a tenant were to leave for \$25,000 in this example, the owner would make a 38% return on his "investment" of \$25,000. There aren't many better deals anywhere out there these days!

One client has had considerable success convincing moderate-income families to buy a home. He gave them information about first-time-home-buyers programs, explained to them how tax incentives work, and convinced them that they could afford to buy a home. He then put \$15,000 into escrow as a contribution towards their down payment, in this way making it possible for several families who previously considered homeownership far beyond their means to buy a home. This was truly a win-win. The families are eternally grateful, and the owner was able to bring his low rents to market with a relatively modest investment.

If you have questions about these topics, or for that matter, any question about rent control in Berkeley or Oakland, call for an appointment. It could be the best investment you ever made.

***Michael St. John is principal consultant at St. John & Associates, a property management consulting firm specializing in rent control and condominium conversion. Michael can be reached at 845-8928 x 101, by fax to 845-1813, or on line at [info@stjohnandassociates.net](mailto:info@stjohnandassociates.net).***