



Overview of the
Oakland Rent Registry

BORNSTEIN LAW

BAY AREA REAL ESTATE ATTORNEYS



From the desk of Daniel Bornstein

Tenants' advocates are an agile bunch.

Even if big, bold initiatives like repealing Costa-Hawkins, scaling back the Ellis Act, or establishing a statewide rent registry failed in Sacramento, the fight would be taken to the local level.

Various iterations of a statewide rent registry have died in the statehouse but these types of databases are mushrooming throughout municipalities, and it has now seeped into Oakland.

Although it is still in its infancy, the implementation of Oakland's rent registry appears to be slow and fraught with challenges. Reporting requirements are slated to begin on March 1, 2023, but we would not be surprised if that date is extended.

Of course, Bornstein Law will keep you in the know as developments take shape but for those of you who want to proactively engage with the Rent Adjustment Program (RAP), the office has indicated an open-door policy and is hosting an online workshop on November 16 to learn more about the program.



Takeaways

Policymakers and regulators have an unquenchable thirst for data and indeed, there are some cogent arguments made for rent registries. While reporting information on rental units isn't all that onerous and lawmakers have attempted to assuage privacy concerns, our main qualm is that it can be used as a trap that exposes landlords to liability for any missteps or innocuous mistakes.

Although the launch date may seem far-flung in the future, our community should create a culture of compliance now. If landlords are abiding by rules as they always should, Oakland's newfangled registry should not be that painful. But if there is any doubt that your landlording practices are violative of Oakland's ordinances, let's bring them into compliance.

Thank you for your continued engagement and as always, certainly feel to reach out to our office with any questions.

I can be emailed directly at daniel@bornstein.law.

Dedicated to helping you power through your real estate challenges,

Big Brother is watching.

Rent registries have become vogue and will soon be coming to Oakland.

Some background is in order.

Rental registries are not a new concept. Some California locales like West Hollywood and Santa Monica have had these mechanisms in place for many years. In 2016, Los Angeles established a program whereby owners must register rental properties, update rental unit information, and pay annual registration fees.

These types of databases and reporting requirements to capture renter household data are proliferating throughout the Bay Area. The stated goals of policymakers have been to create transparency on rental housing stock, keep a pulse on rent prices and the number of evictions, and proactively enforce local ordinances rather than merely respond to complaints initiated by tenants.

The agenda is also to empower tenants to air out any grievances without fear of retaliation.



March 1, 2023 is when rental property owners will be required to register their units with RAP. Moving forward, landlords will be required to update or confirm information annually.

RAP has promised to contact owners of covered units in "late 2022" with instructions on how to register their property using an online rent registry, but the infrastructure is not yet in place.

Developing a rent registry is a herculean task and a technological marvel, so we would not be surprised to see delays.

Oakland's trek to a citywide rent registry

Oakland first flirted with a rent registry in April 2019, when the Rent Adjustment Program (RAP) engaged with FUSE fellowship to explore the implementation of a rent registry designed to enhance enforcement, prevent illegal rent increases, and dissuade property owners from bad-faith owner move-in evictions.

On June 21, 2022, the Oakland City Council went all in. Following in the footsteps of San Francisco, council members voted to approve the establishment of a rent registry.

The new law requires rental property owners subject to the Rent Program Fee to provide tenancy information for each covered unit on an annual basis.

The failure for landlords to comply with the new regulatory regime will be **at** their peril. Consequences include:

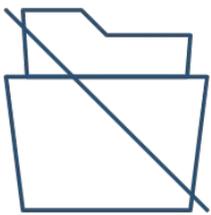
- Owners will not be able to file petitions for rent increases
- Owners will not be able to answer tenants' petitions
- Failure to register will become an affirmative defense in most eviction actions



Exactly which rental units will have to be registered to be compliant?

The short answer is all rental units subject to the Rent Program Fee. This includes those units subject to the Rent Adjustment Ordinance **AND/OR** units that are subject to Oakland's Just Cause for Eviction Ordinance.

However, there are some residential units that are exempt from both the Rent Adjustment Ordinance AND the Just Cause for Eviction Ordinance and are therefore exempt from paying the Rent Adjustment Fee.



By process of elimination, which units do not have to be registered?

- Newly constructed units built entirely from the ground up after December 31, 1995 and not a result of a conversion or prior residential use (Provided that the owner has in hand either (a) Certificate of Occupancy issued after December 31, 1995, or (b) a certificate of exemption issued by the Rent Adjustment Program after December 31, 1995.)
- Fully owner-occupied units, including single-family homes
- Substance Abuse Recovery facilities
- Non-Profits that support the homeless population

Oakland's Business Tax Office only handles billing and licensing and does not make any determinations with regard to exemptions from rent or eviction controls. That's the onus of the Rent Adjustment Program.

Better yet, contact Bornstein Law to determine what regulations govern your rental property.



What information needs to be shared with the Oakland Rent Adjustment Program?

Just about every aspect of the tenancy.

- Tenancy start date
- Initial rent of current tenancy
- Date of last rent increase
- Amount of last rent increase
- Number of occupants
- Tenant names and contact info
- Reason why the previous tenant vacated
- Services included with rent (think utilities, laundry access, parking, etc.)
- Whether the unit is subsidized
- Utilities: Metered, unmetered, or submetered?
- Unit Number/Designation (i.e., #A, #1/2, #4A, etc.)

One of the goals of the rent registry is to have a direct line of communication with tenants in order to verify information.

In no uncertain terms, lawmakers have expressed a desire to give RAP the opportunity to cross-check information submitted by landlords.

A chief public policy goal is to empower tenants by giving renters the opportunity to correct any false statements and voice their concerns.





Interestingly, Oakland's Rent Registry asks for more information than that of San Francisco's reporting requirements.

For example, history of rent increases, tenant contact information, the circumstances that led to previous tenants vacating, and other prying details are demanded by RAP but not by regulators in San Francisco.



Landlords and tenants' advocates have been odd bedfellows in expressing privacy concerns.

One thing that owners coalesce around is the need for privacy safeguards. Oakland has stated that property owners or their agents will have access to all tenancy data for the buildings owned or managed, while tenants will have access to their own unit's tenancy data.

Personal, identifying information will not be publicly accessible, the City states.

Another concern: what if the landlord does not have the requisite data?

The landlord has to demonstrate "substantial compliance," meaning he or she has made a good-faith, lawful effort to obtain data and sign under the penalty of perjury that a good-faith effort has been made to extract the information required. We understand that tenants can be uncooperative in this process and have seen this before in the application of COVID rental assistance.

Let's just do our best to bring tenants to the table and use what we have.