

*Berkeley's Affordable Housing Crisis:
Landlords & their Crucial Role
as Part of the Solution*

Berkeley Housing Authority
City of Berkeley Shelter Plus Care
Rent Stabilization Program

11 Myths about the Section 8 Program

1. BHA won't provide owners a fair rent
2. *BHA doesn't follow HUD rules*
3. Owners lose the ability to select their tenants
4. *An owner has to wait up to a year for a rent increase*
5. Section 8 does not exempt you from Rent Control
6. *The majority of families that benefit from BHA's S8 program are lazy and don't work*
7. BHA's annual unit inspection always results in increased costs for the owner
8. *Owners receive no assistance with lease violations*
9. Non-payment of rent happens more frequently in the S8 program
10. *Renting to a family with a S8 voucher means the family cannot be evicted*
11. Evicting a family with S8 is very expensive

Myth: BHA doesn't follow HUD rules

BHA Section 8 Regulations

Owner Opt-Out of Housing Assistance Payment Contract

- Code of Federal Regulations (CFR) 982.455 previously included a provision for an owner to “Opt-Out” of the Housing Assistance Payment (HAP) Contract with 90-day notice
- Lawsuit “Barrientos v. 1801 1825 Morton LLC” decided in 1999, eliminated the Opt-Out provision from the Section 8 Program in accordance with U.S. Court *Barrientos* decision
- HAP contract can only be terminated (a) when lease is terminated, (b) the family no longer has Section 8 assistance, (c) BHA lacks financial resources to make required rental subsidy payments, or (d) upon the death of the only remaining household member [HAP contract template]

Establishing contract rent

- Subject to CFR 982.507 (Rent Reasonableness) and CFR 982.509 (Rent Control), when establishing or adjusting contract rent

Rent Board Regulations

Units rented under a Housing Assistance Payment contract are:

- Exempt from registration and payment of fees provided the contract rent is not more than the Payment Standard [BHA “rent ceiling”]
- Exempt from Rent Board determination of rent, and annual rent adjustment. If tenant files a petition, owner may be required to attend a hearing
- Covered under the eviction controls, Good Cause for Eviction
- Subject to Measure P – when rent demanded exceeds BHA Rent Ceiling

Myth: BHA won't provide owners a fair rent

BHA Section 8

- BHA performs a rent reasonableness test to determine initial contract rent using current market rate rents as comparables
- Unit is exempt from Rent Board registration, rent ceiling and AGA adjustments, provided rent does not exceed applicable payment standard (“**Payment Standard=BHA rent ceiling**”)
- BHA “rent ceilings” are adjusted annually, and owners are eligible for an increase annually. The 27% increase in 2016 is not the norm; **7.3%** average increase over the last 5-year period.
- Viewed over a 20-30 year period, BHA rent ceilings at or above market, with majority of the rent guaranteed by BHA

Rent Control

- Under rent control increases in rent for occupied units are limited to the Annual General Adjustment (AGA).
 - 1.5% in 2016
 - 2.0% in 2015
 - **1.7%** average over past 5 years
- No restriction on new rents established for units at turn over (vacancy decontrol)

Existing tenant: 2-Bedroom Unit

BHA Section 8

- Rent \$1,743
- BHA 2016, 2-bedroom “Rent Ceiling” (Payment Standard) **\$2,208**
- 2016 *Rent Ceilings i.e. Payment Standards* (subject to rent reasonableness):
 - \$1,746 [1-bedroom]
 - \$2,208 [2-bedrooms]
 - \$3,078 [3-bedrooms]
 - \$3,431 [4-bedrooms]

Rent Control

- Rent \$1,743
- Rent for 2016 = **\$1,769** [\$1,743 + \$26]
- Rent Board AGA 1.5% for 2016

Myth: Owners lose the ability to select their tenants

BHA Section 8

- Owners can use any resource to identify prospective renters, including BHA's free "Available Unit Listing."
- Owners apply standard screening/tenant selection procedures to S8 Voucher holders, including application fees, credit and criminal checks, landlord references.
- All households with Section 8 vouchers are vetting by BHA for violent or criminal behavior in prior 3 years.
- Owner and family are bound to the lease unless voluntarily forfeited by the family, or terminated by the owner for "Good Cause."

Rent Control

- Owners use any resource to identify prospective renters
- Owners apply standard screening/tenant selection procedures including application fees, credit and criminal checks, landlord references
- Owner and family are bound to the lease unless voluntarily forfeited by the family, or terminated by the owner for "Good Cause"

Myth: An owner has to wait up to a year for a rent increase

BHA Section 8

- An owner can request a rent increase one time during any 12 month period
- The request can be made at any time during the 12 month period. However, a higher Payment Standard is only *applicable* at the family's Annual Recertification
- There is no “catch-up” provision, but an owner can go to the applicable Payment Standard (BHA *rent ceiling*, subject to rent reasonableness)
- In the unique situation where market rents have increased *so significantly*, we are exploring ways to implement the new higher standard at an earlier date

Rent Control

- An owner can only raise the rent to the rent ceiling. Generally a one per year increase in January.
- An owner may request a rent increase at any time, up to the Annual General Adjustment
- An owner can play “catch-up” and in a single year, take increase that were available in prior years

Myth: Section 8 does not exempt you from Rent Control

BHA Section 8

- Annual registration...**Exempt**
- Registration Fee...**Exempt**
- Rent Ceiling...**Exempt** if rent does not exceed BHA Payment Standard
- Annual Rent Adjustment/Increase...**Exempt** from AGA; Payment Standard increased *average* of **\$384** for all bedroom sizes in 2016
- Involuntary Termination of Lease...not allowed; owner must have cause
- Eviction...subject to “Good Cause”

Rent Control

- Annual registration ... **Required**
- Registration fee... **\$213/unit**
- Rent Ceiling ... Set by Rent Board; Vacancy Decontrol
- Annual Rent Adjustment/Increase ... **1.5%** for 2016
- Involuntary Termination of Lease ... not allowed; owner must have cause
- Eviction ... subject to “Good Cause”

Myth: The majority of families that benefit from BHA's S8 program are lazy and don't work

BHA Section 8

Renters include:

- Seniors/Disabled households employed or receiving Social Security, SSI, Pension or retirement benefits (62%)
- Adults aged 18-61 with or without children, employed, or receiving CalWORKS or SSI (24%)
- A household with annual income between 30 and 50% Area Median Income [\$2,712 per month for a family of 1]
- *The Section 8 participant is* the barista at your local coffee shop; the playground supervisor at the neighborhood school; the bagger at the local grocery store; the person handing out samples at Costco; the ticket checker at the Warriors Game

Rent Control

Renters include:

- Seniors/elderly employed or receiving Social Security, pension or retirement benefits
- Disabled employed or receiving SSI or annuity payments
- Adults aged 18-61 with or without children employed or receiving SSI Young families working or receiving "welfare"
- A household with unknown income

Myth: BHA's annual unit inspection always results in increased costs for the owner

BHA Section 8

- The unit is exempt from landlord self-certification requirements under the City's Rental Housing Safety program, and the \$26.00 per unit annual fee*
- BHA follows HUD's Housing Quality Standards to determine that a unit is safe, decent and sanitary
- The annual inspection (no fee) alerts the owner to changes in the unit, provides an opportunity for prevention/early repair, and an objective report of "conditions" for use in discussion with the tenant about proper unit care
- A special inspection can be requested if the tenant or owner suspects a problem, with 28 days allowance to make corrections
- Unit could be inspected under City's Code Enforcement Dept. if code violation is suspected by a tenant

Rent Control

- The unit is subject to landlord self-certification requirements under the City's Rental Housing Safety program
- The annual fee for participation in the Rental Housing Safety program is \$26.00 per unit
- Unit could be inspected under City's Code Enforcement Dept. if code violation is suspected by a tenant
- Sanctions can include additional fees, penalties, assessments, and/or liens.
- Unrepaired violations can result in a reduction in the rent and require an overcharge refund to the tenant

*Incorrect; fee is required

Myth: Owners receive no assistance with lease enforcement

BHA Family Obligations

- Family rent portion must be paid to the landlord in accordance with the lease
- Family responsible for damage to the unit and/or appliances beyond normal wear
- Family must maintain utilities for which they are responsible under the lease
- Family may not allow any individual(s) to live in the unit (or use the address for any purpose)
- Family cannot engage in nuisance behavior, alcohol related disturbances, or criminal behavior involving illegal drugs or violence

Typical Lease Conditions

- Rent must be paid to the landlord on or about the 1st of each month
- Family cannot damage the unit
- Family must maintain utilities
- Family cannot sublet the unit
- Family cannot engage in nuisance behavior

...assistance with lease enforcement

BHA Section 8

- BHA case file is documented with all reports from owner (or others) about alleged violations of Family Obligations*
- BHA issues warning notice, or requires interactive meeting with family
- BHA offers family opportunity to correct behavior, or to exercise right to move (family choice)
- If alleged behavior (that is in violation of Family Obligations) is confirmed, BHA proposes termination of Voucher
- BHA has solid partnerships with:
 - BPD
 - East Bay Community Law Center

*BHA will respond similarly to allegations of program violations by the owner

Rent Control

- Rent Board counselors are available to respond to questions/inquiries from owner or tenant
- Mediation services provided

Myth: Non-payment of rent happens more frequently in the S8 program

BHA Section 8

- Tenant pays 30% of adjusted monthly income to landlord; BHA pays the balance (usually the larger portion)
- Family can request a recalculation of rent if income changes
- Rent remains affordable, including situations where family loses 100% of income, and BHA pays 100% of the rent
- Less than 5% of terminations involve non-payment of rent

Rent Board

- Family income is generally unknown
- Family rent is not based on family income
- No adjustment to rent if family income changes, and family is unable to pay
- 90% or more of evictions involve non-payment of rent

Myth: Renting to a family with a S8 voucher means the family cannot be evicted

BHA Section 8

- Tenancy is subject to Good Cause for Eviction
- BHA's policies/records are available to owner (and tenant) in any legal action:
 - Family rent is by definition, affordable
 - BHA's inspection reports document conditions/abuse/neglect
 - BHA's documented efforts to obtain voluntary compliance by family

Rent Board

- Tenancy is subject to Good Cause for Eviction
- Owner must rely upon his/her own records in any legal action

Myth: Evicting a family with S8 is very expensive

BHA Section 8

A family with Section 8 assistance faces:

- Loss of home – eviction;
- Loss of Section 8 assistance for the next unit;
- Record of eviction in national HUD database (which could impact ability to apply in another jurisdiction in the country)

An owner may minimize financial loss because:

- In many cases BHA can continue making rental subsidy payments to the owner during the eviction process, minimizing financial loss between tenancies
- Family may be motivated to move voluntarily (forgoing eviction) in order to preserve S8 voucher
- Owner can use BHA's Section 8 termination notice in support of eviction

Rent Control

- Family may cease making rent payments; owner receives 0% of the monthly rent
- Owner must incur full cost of eviction action, and family may be judgment proof

Is the Section 8 Program right for you?

- Payment standards recently increased: \$1,746, 1-bedroom; \$2,208, 2-bedroom; \$3,078, 3-bedrooms, \$3,431, 4-bedrooms
- Free unit listing service with all applicants pre-screened for drug and violence related criminal history
- Assistance with tenancies involving leasing issues (for landlords without a professional property management services)
- Ability to receive substantial annual increases
- Exemption from Rent Board registration and fees
- BHA *exploring* “damage claim” program that would be available to owners, in addition to the Security Deposit, for unpaid rent or tenant caused damage at the end of tenancy (if unit is leased to another family with S8 assistance)
- Tax relief – Berkeley City Council exploring reduction/elimination of increases in “gross receipts tax” (business license) for rental units in the Section 8 program
- Guaranteed rent when tenant’s income decreases
- Free annual unit inspections, providing a snapshot of issues with the unit in advance of major deterioration of the situation
- End of year federal “1099” tax form to assist in tax preparation
- Seamless integration with City services
- Ability to give back to your community by renting to a family with limited financial resources, many trying to pull themselves out of poverty