

BERKELEY PROPERTY OWNERS ASSOCIATION

Jay Kelekian
Executive Director
City of Berkeley
Rent Stabilization Board
2125 Milvia Street
Berkeley, CA. 94707

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RENT STABILIZATION BOARD

August 23, 2007

Dear Mr. Kelekian,

On behalf of BPOA, I am writing to request that you take steps with the Board to amend Regulation 702 to comply with the Rent Stabilization Ordinance amendments adopted by voters as Measure P in the November 2004 election. As currently written, Regulation 702 compels owners to pay an illegally high interest rate on security deposits.

As you know, Measure P fixed the interest rate that owners must pay on security deposits. In relevant parts, Chapter 13.76.070, as modified by Measure P, now requires the following:

13.76.070 Security deposits.

Any payment or deposit of monies by the tenant, the primary function of which is to secure the performance of a rental agreement or any part of such agreement, including an advance payment of rent, shall be placed held by the landlord, in an interest bearing account at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation a fiduciary capacity for the benefit of the tenant and shall accrue simple interest ***at the rate equal to the average rates of interest paid on six-month certificates of deposit by insured commercial banks*** until such time as the payment or deposit is returned to the tenant or entitled to be used by the landlord as provided in Civil Code Section 1950.5. The interest earned accrued by said payment or deposit on monies through October 31st of each year shall be returned to the tenant annually in December of each year, either through a rent rebate or cash payment, in December of each year, and shall be ***at a rate equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by insured commercial banks as published by the Federal Reserve Board*** on the first business day of each month for the prior 12 months ending on November 1st, rounded to the nearest tenth.... [Emphasis added.]

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Regulation 702 was amended by the Rent Stabilization Board in response to the passage of Measure P. It also fixes the interest rate that owners must pay on security deposits. However, it does so differently from Chapter 13.76.070:

702. Payment of Interest on Security Deposits

[. . .]

(B) The interest payable in December of each year shall be at the rate equal to the 12 month average of the average rates of interest paid on six-month certificates of deposit by insured commercial banks *as published in Federal Reserve Board Statistical Release H.15* on the first business day of each month for the prior twelve months ending on November 1, rounded to the nearest tenth. [Emphasis added.]

The Rent Board annually publishes the “official” interest rate that landlords must pay based upon Regulation 702. Landlords rely upon this official announcement and pay accordingly. This “official” rate, however, is incorrect, and has resulted in landlords having to pay a higher interest rate than they can practically achieve.

Federal Reserve Board Statistical Release H.15 does not publish the average rate of interest paid by insured commercial banks on six-month CDs. Rather, it publishes the average rate of interest paid on six-month CDs *in the secondary market*. This is not a rate obtainable by consumers from insured commercial banks. It is the rate paid by banks and brokerage houses and large institutional investors for CDs that have resold onto the secondary market. As Footnote 6 of the Release explains, the published interest rate is “an average of dealer bid rates on nationally traded certificates of deposit.” As such, the published rate also reflects trades in the secondary market in amounts greater than \$100,000, which are not RDIC-insured as required by 13.76.070.

As it is, the standard imposed by Measure P was and is impractical. As you well know, security deposits do not come in neat \$1000 dollar increments (as required for the typical CD), and they must be sufficiently liquid that they can be refunded with about 30 days notice (far less than the 6-months required by a six-month CD). The requirement imposed by Regulation 702 simply adds insult to injury, taking the impractical interest requirement and making it impossible---not to mention illegal.

We are certain that the reference to Statistical Release H.15 was the inadvertent error of a staff member unfamiliar with market economics, rather than a petty effort to grab a few extra tenths of a percentage point out of landlords. All the same, we ask that you initiate the process of amending Regulation 702 to reflect the language and intent of Measure P, namely that landlords be required to pay the “average” 6-month CD interest rate available to them from insured commercial banks.

Please contact me and let me know what steps you will take to remedy the inaccuracy of Regulation 702. I wish also to know what process will be created to permit landlords to recover excess interest already paid. I look forward to your speedy response.

Best Regards,

A handwritten signature in black ink, appearing to read 'James Kilpatrick', written over a horizontal line.

James Kilpatrick
President
Berkeley Property Owners Association