

WHAT YOU NEED TO KNOW ABOUT CALIFORNIA'S NEW STATEWIDE "RENT CONTROL" AND "JUST CAUSE" EVICTION LAWS

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With the enactment of the Tenant Protection Act, California now has a combination of eviction protection for residential tenants and vacancy decontrol, consisting of regulation of rent increases during the tenancy, which is reset to market value rent when a unit is vacant. Although the vacancy decontrol measures and, specifically, the limits on rental increases, have garnered the most attention, the eviction protections may have a greater impact on owners of multi-family residential properties.

HOW DID WE GET HERE?

Historically, statewide rent control was unable to gain traction in the Legislature. In 1995, the Costa Hawkins Rental Housing Act ("Costa Hawkins") was passed providing cities with the authority to enact local rent control measures but prohibiting cities from applying rent control laws to rental properties built after January 1, 1995. However, after a ballot measure that sought to repeal Costa Hawkins failed in November 2018, lobbying groups mobilized to seek a solution in the Legislature. The result- the Tenant Protection Act- was an attempt at balance. The provisions of the new law do not supersede stricter, local rent control measures passed by cities and counties consistent with Costa Hawkins and state government.

HOW DOES THE LAW PROTECT TENANTS FROM EVICTION?

After a tenant has occupied a residential property for a period of 12 months, the owner of the property cannot terminate the tenancy without "just cause." The law provides two categories of "just cause" evictions: (1) "at-fault" causes, which generally refer to causes for which the tenant is at fault; and (2) "no-fault" causes, which generally refer to actions by landlords or third-party governing bodies. The latter "no-fault" just causes of eviction require the property owner to provide relocation assistance or waive the last month's rent.

The permissible "at-fault" causes for eviction are limited. These include rental default, breach of a material lease term, and unpermitted sublease or transfer of the premises. A tenancy may be lawfully terminated when the tenant's actions result in nuisance, waste, criminal activity and/or illegal land use. Further, a property owner may terminate a tenancy if the tenant refuses to extend a lease after written request to do so or the tenant refuses to return possession of the premises.

The law contains four categories of "no-fault" causes of eviction. A property owner may terminate the tenancy to withdraw the property from the rental market. A property owner may also terminate the tenancy to allow owner move-in or immediate family members to reside at the property. In addition, a landlord can terminate a tenancy to

perform a substantial remodel of the property so long as the remodel cannot safely be accomplished with the tenant in place and the remodel requires tenant vacancy for more than thirty (30) days. In addition, the remodel must be substantial and more than a cosmetic remodel (such as painting, decorating or minor repairs). Lastly, the law permits eviction if vacancy of the property is required by court order or law.

In addition to the foregoing eviction protections for tenants, the law requires that property owners provide tenants with a two-step notice requirement. The property owner must first provide a notice of violation with a three-day period to cure the default. Thereafter, the property owner can send a three-day notice to terminate.

For residential landlords with properties that were not subject to local eviction protection measures, this may have a greater overall effect on their business practices. To take advantage of certain exemptions or the permitted bases for evictions, the lease must be carefully written. For this reason and others, conforming to the new regulatory environment may prove more onerous than the cap on rent increases discussed below.

WHAT PROPERTIES ARE EXEMPT FROM EVICTION PROTECTION?

Several types of properties are excluded from the "just cause" requirements. Most significantly, the "just cause" protections do not apply to housing that has been issued a certificate of occupancy within the previous 15 years. As such, the "just cause" evictions will not apply to new housing projects.

The eviction protections also do not apply to single-family owner-occupied residences and certain other owner-occupied residences. Properties such as dormitories, hotels, extended care facilities, elderly care facilities and certain affordable housing units are exempt from the "just cause" requirements. The state mandated eviction protections will also not apply to properties that are subject to more protective eviction restrictions.

HOW DOES THE NEW LAW LIMIT RENT INCREASES?

Beginning on March 15, 2019, property owners are not permitted to raise the gross rental rate over 12 month period by 5% plus the percentage change in the cost of living ("CPI") or 10%, whichever is lower. CPI refers to the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the region where the residential real property is located, as published by the U.S. Bureau of Labor Statistics. Following the first 12 month period, a property owner can only increase the rent twice in any subsequent 12 month period of the tenancy to the allowable 5% plus CPI or 10%.

The cap on rental increases is coupled with vacancy decontrol. There is no restriction on the rent increases for any new tenancy in which no tenant remains in lawful possession. In other words, at the start of a new tenancy, the property owner may set the rental rate to market.

The law also places a restriction on the amount a tenant may charge a subtenant. A tenant may not enter into a sublease that results in a total rent that exceeds the allowable increase in rent over a twelve (12) month period.

WHAT PROPERTIES ARE EXEMPT FROM STATEWIDE RENT CONTROL?

The law excludes certain properties from rent control, albeit fewer properties than the exemptions for "just cause" eviction. Notably, the limit on rent increases does not apply to housing for the first 15 years after the date a certificate of occupancy was issued. Affordable housing and dormitories that are maintained in connection with and occupied by students at a California higher education institution are both exempt from the cap on increases in

rent. In addition, the statewide rent control measures do not apply to most single family residences and condominiums, unless owned by a real estate investment trust, a corporation or a limited liability company. The law also does not apply to a owner-occupied duplexes so long as the owner has occupied the property since the tenancy commenced and remains in occupancy throughout the tenancy.

WHAT DOES THIS MEAN FOR LANDLORDS OF RESIDENTIAL PROPERTIES?

For the next 10 years, landlords that are not in cities with pre-existing tenant protections, such as San Francisco and Berkeley, may find themselves in new territory. For developers forecasting the financing of new residential properties, they can be relieved that the new law contains an exemption for the first 15 years from the date of the certificate of occupancy.

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