

Updates

October 08, 2019

California Lawmakers Deliver Rental Relief: Tenant Protection Act of 2019

Governor Gavin Newsom signed into law the Tenant Protection Act of 2019, [AB 1482](#), (now California Civil Code Section 1946.2 and 1947.12), on October 8, 2019, joining only Oregon in enacting a statewide rent control law. Billed as the "anti-gouging" legislation, AB 1482 is intended to prevent rent spikes to residential tenants, keep people in their homes and preserve communities.

Effective Date of the Tenant Protection Act

The Tenant Protection Act will become effective on January 1, 2020, and will remain in effect through January 1, 2030. Note that the rent cap provisions retroactively apply to rent increases from March 15, 2019, as described in more detail below.

Rent Cap

The Tenant Protection Act establishes a rent limit. A residential landlord shall not, over a one-year period, increase the "gross rental rate" more than (a) 5% plus the percentage change in the cost of living or (b) 10%, whichever is lower. (Cal. Civ. Code Section 1947.12(a)(1).) (All references to the Cal. Civ. Code unless otherwise noted.) The "gross rental rate" is determined excluding rent concessions and discounts.

Under the Tenant Protection Act, there is no vacancy control; the rent limit does not apply to vacant units and the landlord may establish the rent free of this limit. (Section 1947.12(b).) Subsequent rent increases are subject to this rent limit.

Interestingly, the Tenant Protection Act does not address increasing rent for capital expenditures. Under some local jurisdictions, a landlord can make capital expenditures to a building and, under certain restrictions, raise the rents by more than the rent limit established by the local jurisdiction. While the Tenant Protection Act addresses "no fault evictions" for capital improvements, it is silent on a landlord's ability to pass through capital improvement expenses.

Some local jurisdictions allow landlords to increase rents by more than the rent limit if the landlord has not made any previous increases in rent, considered "banking" the rent increases. The Tenant Protection Act does not provide for banking any rent increases.

The Tenant Protection Act also does not delineate what is considered rent that would fall under the rent limit. It would appear limited to the rent charged for the residential unit and not for other landlord services, such as utilities, laundry or parking.

The following residential real properties are exempt from the Tenant Protection Act (Section 1947.12(d)):

- Affordable housing projects that are either deed restricted or subject to a regulatory restriction contained in an agreement with a governmental agency; but, when a regulatory restriction expires, the landlord can set the new rent but will be subject to the rent limit (Section 1947.13(a)(2).)
- Dormitories operated by an educational facility
- Residential real properties subject to a local rent control and the rental rate is less than the rent limitation
- Housing that has been issued a certificate of occupancy within the previous 15 years

- Condominiums that are not owned by a real estate investment trust, a corporation or a limited liability company that has one corporate member, and provided specified notices are given to the tenant
- A two-unit building in which one of the units is occupied by an owner as the owner's principal residence

Assisted living facilities can also qualify for an exemption. If the assisted living facility can demonstrate that it complies with laws and promotes preservation of assisted housing, then the assisted living facility can set the initial rent, but later increases are subject to the rent limit. (Section 1947.13(b).)

Subject to the rent limit imposed by Cal. Civ. Code Section 1947.12(a)(1).), a landlord is prohibited from increasing the gross rental rate in more than two increments over a 12-month period. (Section 1947.12(a)(2).). While the rent limitations apply to units built before September 1, 2005, nothing prevents a landlord from raising the rent to market rate after a tenant vacates the unit.

If a landlord raises rent by more than the rent limit between March 15, 2019, and January 1, 2020, the landlord is required to provide notice to the tenant of the increase. (Section 1947.12(h).) However, the rent paid as of March 15, 2019, will be the rent effective January 1, 2020, and all future rent increases shall be subject to the rent limit. Landlord is not required to reimburse the tenant of any overpayment by the tenant.

This rent limitation will also apply to any subleases. (Section 1947.12(c).)

Tenant Protection Act Governs Evictions

The Tenant Protection Act provides eviction controls. It will apply to a "tenant who continuously and lawfully occupied a residential real property for 12 months" and to additional adult tenants who "are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24 months." (Section 1946.2(a).)

Under the Tenant Protection Act, eviction controls will apply to all residential real properties in California (including new developments) after January 1, 2020. Eviction controls will not apply to the following residential real properties or "residential circumstances" (Section 1946.2(e).):

- Transient and tourist hotels
- Non-profit hospitals, religious facilities, senior residential care facilities
- Dormitories operated by an educational facility
- Housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner
- Single-family owner-occupied residences
- Owner-occupied two-unit building in which owner occupies one of the units
- Housing that has been issued a certificate of occupancy within the previous 15 years
- Condominiums that are not owned by a real estate investment trust, a corporation, or a limited liability company that has one corporate member, and provided specified notices are given to the tenant
- Affordable housing projects that are either deed restricted or subject to a regulatory restriction contained in an agreement with a governmental agency

The Tenant Protection Act eviction controls separate evictions between a "just cause eviction" and a "no fault eviction." (Section 1946.2(b).) "Just cause evictions" are identified as the following:

- Failure to pay rent
- Breach of a material lease term
- Committing or permitting a nuisance
- Committing waste

- A written lease that terminates on or before January 1, 2020, and the tenant refuses to sign an extension that contains similar terms
- Criminal activity on the property
- Subletting or assigning the unit in violation of the lease
- Refusing to allow the landlord to enter the unit when the landlord has a right to do so under California law
- Using the premises for an unlawful purpose
- An employee, agent or licensee fails to vacate after termination
- Failure to vacate after tenant agrees or notifies landlord that tenant will surrender the premises (Sections 1946.2(b)(1)(A)-(K).)

For just cause evictions, landlords must issue a written notice of default and provide for a right to cure. (Section 1946.2(c).) If the violation is not cured, then landlord must give a second three-day notice to quit without an opportunity to cure.

If there is a local ordinance that governs a just cause eviction, the just cause eviction will not be subject to both the local ordinance and the Tenant Protection Act. (Section 1946.2(g)(2).) Just cause evictions under the Tenant Protection Act do not apply if a local rent ordinance was adopted on or before September 1, 2019, (Section 1946.2(g)(1)(A).), or a local rent ordinance adopted or amended after September 1, 2019, and that rent ordinance is more protective. (Section 1946.2(g)(1)(B).) If the local ordinance is less protective than the Tenant Protection Act, the Tenant Protection Act shall apply. (Section 1946.2(g)(3).)

"No fault evictions" are identified as the following:

- Owner move-in by the owner or spouse, domestic partner, children, grandchildren, parents or grandparents so long as the lease provides for an owner move-in
- Withdrawal of the residential real property from the rental market
- Compliance with a government order
- Intent to demolish or substantially remodel the residential real property (Sections 1946.2(b)(2)(A)-(D).)

For no fault evictions, landlords must provide relocation assistance. The required assistance must be either the waiver of the last-month's rent or payment in an amount equal to one-month's rent that was in effect when the notice of terminate was issued. This payment is due within 15 days after service of the notice to vacate. (Sections 1946.2(d)(2) and (3).) The rent waiver of payment is credited against any other relocation assistance required by law. (Section 1946(d)(3)(C).)

Notice of the Tenant Protection Act to Tenants

Landlords must provide notices to tenants informing them of the Tenant Protection Act. For all leases entered into before July 1, 2020, landlords must give written notice or an addendum to the tenant lease no later than August 1, 2020. (Section 1946.2(l)(1).) For all leases entered into after July 1, 2020, landlords must include the notice in the lease or have the tenant sign a written notice. (Section 1946.2(l)(2).) There is specific language and font size required for the notice. (Section 1946.2(l)(3).)

Conclusion

The Tenant Protection Act provides both rent limits and eviction controls to California tenants. Designed to protect tenants and stabilize neighborhoods and communities, the Tenant Protection Act has already been sharply criticized and the economic effect remains to be seen. (*See, Wall Street Journal*, September 11, 2019, "The World's Dumbest Housing Policy;" and *Bisnow*, dated September 16, 2019, "Treasury Plans to Restrict

Multifamily Lending in Areas of Rent Control.")

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