



LANDLORD TENANT LAW IN THE CONTEXT OF THE COVID-19 ERA & BEYOND

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12:00 p.m.-1:15 p.m.



HOW DID WE GET HERE AND WHERE ARE WE HEADED?

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HOW OUR WORLD HAS CHANGED since 2008 – A little History

- Foreclosure Crisis and the Great Recession of 2008
- Investors bought up Single Family Homes to market as rental properties
- Increase of Tenants -- due to massive foreclosures, coupled with prospective home owners squeezed out of the market by investors.
- Rent increases rampant even with 10% unemployment & 4.3% drop in GDP
- Lull in housing construction for roughly eight - ten years exacerbated shortage of housing stock
- Cities/Counties struggling to meet their obligations
- Demise of Redevelopment Agencies in 2011, fueled by the recession
- Housing Supply, particularly for low income people, is further inhibited
- Rents continue to Rise as housing supply gets tighter and tighter

THE LEGAL LANDSCAPE

- HOUSING ELEMENT LAW – Govt. Code § **65580 - 65589.11 – Added by Statute 1980**
 - *Every jurisdiction must adopt a* local element in its general plan to implement state & local housing goals and objectives.
- DENSITY BONUS LAW – passed by CA Legislature in 1979 with the aim to address a housing shortage in California. Was used sparingly. Statute has been amended at least 20 times since 1999, in attempts to spur Affordable Housing construction.
- HOUSING ACCOUNTABILITY ACT -- originally passed in 1980, as the “Anti-NIMBY” Act. It was a key enforcement provision under Housing Element law. Statute has been amended at least 18 times since 1999, in attempts to close loopholes used by cities/counties to deny affordable housing projects.
- Prior to 2011, most cities relied on the Redevelopment Agency to produce housing for low income.
- After demise of RD Agencies, it was a whole new world, with diminished funding for affordable housing.
- Big fly in the ointment has been the Costa Hawkins Act, CC. §1954.50-1954.535. Adopted in 1995; it sets limits on the kind of rent control policies that cities are able to impose, and created a conundrum for politicians.
- CEQA used fairly successfully to slow down growth and inhibit construction of low income housing.

THE LEGISLATURE'S RESPONSE TO THE HOUSING SHORTAGE

- Passed SB 35 in 2017, to encourage/spur construction by eliminating some discretion on the part of jurisdictions.
- Passed SB 330 in 2019, to establish and/or clarify local jurisdictions' rules and procedures used to entitle developments. The law also strengthened development protections to encourage and facilitate the construction of new housing, with emphasis on affordable housing.
- Passed AB 1482 in 2019,[C.C. §§ 1946.2 & 1947.12] to institute a new tenant protection that requires “just cause” for an eviction. The law also placed caps on some rental rates to try to slow down rapidly rising rents.

THEN COVID-19 HIT IN 2020, & EVERYTHING STOPPED

- For good resource on these laws refer to <https://housing.ca.gov>
- COVID-19 Tenant Relief Act [CCP §§ 1179.01 – 1179.07]
 - Added by Statutes 2020 (AB 3088, Effective 08/31/2020, as subsequently amended in 2021 (SB 91, Effective 1/29/21; AB 81, Effective 2/23/21; & AB 832, Effective 6/28/21). Statutes in effect until 10/01/2025
- Covid-19 Rental Debt Jurisdiction of Small Claims Court [CCP § 116.223]
 - Allows landlords/tenants to litigate disputes regarding COVID-19 rental debt in Small Claims Court; jurisdictional limits of small claims court do not apply. Cannot commence action before 11/01/21 and special rules apply. Statute in effect until 10/01/2025

Civil Code §1946.2 – Just Cause for Eviction

- (a) Applies in most cases to tenants in lawful possession for 12 months, or up to 24 months if additional adult tenants added to lease within last 24 months.
- (b)(1) – “At-fault” Just Cause defined. Lists 11 reasons (A) – (K), which include nonpayment of rent, breach of material term of lease, committing/maintaining a nuisance, waste, criminal activity, etc. Must give tenant opportunity to cure the default before issuing notice of termination.
- (b)(2) – “No-fault” Just Cause defined. Lists 4 reasons (A) – (D), which include intent by owner to occupy premises, withdrawal of the property from the rental market, where order to vacate is issued by enforcement agency or Court based on condition of premises, or owner intends to demolish or substantially remodel premises.

Civil Code § 1946.2(d) – Relocation Assistance

- When an owner issues a notice to terminate tenancy based on a “no-fault” just cause reason under (b)(2), at owner’s option, must do one of the following, regardless of the tenant’s income:
 - Provide tenant within 15 calendar days of service of the notice, with a direct payment of relocation assistance equal to one month of tenant’s rent in effect at the time the notice was issued; or
 - Waive in writing the payment of rent for the final month of the tenancy and this waiver must be made prior to the rent becoming due.
 - The notice of termination must advise tenant of tenant’s right to relocation or a rent waiver, and shall state the amount of rent to be waived, and that no rent is due for the final month of the tenancy

Civil Code § 1946.2(e) – Exemptions – Owner must give written notice to tenant if rental is exempt under the law

- Transient and tourist hotel occupancy; Hospitals, religious facilities, dormitories, extended care & licensed residential care facilities for elderly or adults
- Single family owner-occupied residences/mobile homes in which the owner occupant rents no more than two units or bedrooms, including ADU
- Duplex in which owner occupies one of the units as his home;
- Housing issued certificate of occupancy within previous 15 years
- Residential real property, including mobile home that is alienable separate from the title to any other dwelling unit, provided that owner is not a real estate investment trust, corporation or LLC

Civil Code § 1946.2(g) – Law will not apply where local “just cause” ordinance is in effect.

- Where local ordinance was adopted on or before 9/1/2019, local ordinance will apply.
- Where local ordinance was adopted or amended after 9/1/2019, it will only apply if it is more protective than this law.
- Ordinance is “more protective”, if it meets 3 criteria:
 - “Just Cause” for termination under Ordinance is consistent with the law
 - Ordinance further limits the reasons for termination of tenancy, provides for higher relocation amounts, or additional tenant protections not prohibited by any other law.
 - Local Government has made binding finding that ordinance is more protective
- Law sunsets on January 1, 2030

Civil Code § 1947.12 – Caps on rental rates

- Rent increases over the course of any 12 month period are limited to the lower of 5% plus the CPI or 10%
- When same tenant in occupancy over any 12 month period, Owner may implement the statutory increase in two increments.
- Owner may establish the initial rental rate with a new tenancy in which no tenant from the prior tenancy remains in lawful possession.
- Tenant may not enter into a sublease that results in a total rent for the premises that exceeds the allowable rental rate authorized by law.
- Owner must provide tenant with notice of increase, under CC § 827

Civil Code § 1947.12(d) – Exemptions – Owner must give written notice to tenant of exemption status – Exempted properties

- Housing restricted by deed or regulatory restriction with govt. agency
- Dormitories (k – College) owned & operated by educational institutions
- Housing subject to rent or price control through valid exercise of police power that restricts annual increases to amount less than law
- Housing issued a C of O within last 15 years (except mobile homes)
- Residential real property that is alienable separate from the title to any other dwelling unit when Owner is not a real estate investment trust, a corporation or an LLC in which one member is a corporation; or management of mobilehome park, as defined in C. C. § 798.2
- Law sunsets on January 1, 2030

Civil Code § 827- Notice of change of terms Residential Leases

- (b)(1) Leases from week to week, month to month or other period less than a month, landlord may increase the rent upon giving written notice to tenant by either (A) personal delivery; or (B) service by mail under procedures in C.C.P. 1013.
- (b)(2) - 30 days advance written notice, if the proposed rent increase is 10% or less than the rental amount charged at any time during the 12 months before the effective date of the increase (either by itself or combined with other rent increases during the previous 12 months)
- (b)(3) – 90 days advance written notice, if the proposed rent increase is greater than 10% of the rent charged during the previous 12 months under same terms as specified in (b)(2) above

COSTA-HAWKINS RENTAL HOUSING ACT CIVIL CODE § 1954.50 et seq.

- Enacted in 1995, its original stated intent was to rein in rent control ordinances, particularly in the cities of Santa Monica and Berkeley. But that turned out not to be the case.
- This law imposes serious limitations on existing and future municipal rent control ordinances.
 - It prohibits cities from establishing rent control over certain kinds of residential units where the unit “is alienable separate from the title to any other dwelling unit”, e.g. single-family dwellings, condominiums sold individually, or where the C of O for the unit was issued after 2/1/1995
 - It prohibits "vacancy control", also called "strict" rent control. When a tenant moves out, the owner is free to set the new rent amount, without any restrictions.

