

STATE-WIDE RESIDENTIAL RENT CONTROL (A.B. 1482)

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For the first time in California history, rent control and “just cause” eviction applies to residential rental properties. AB1482 is modeled after an Oregon statute. But California law requires a hearing to avoid confiscatory results from a fixed rent ceiling and this law does not have that.¹

Let’s look at what the law is and who it affects. Does this law apply to mobilehome parks? No. Does this law apply to mobilehome tenancies? No. Does the law apply to park owned units held out for rent? No.

The basic rule: With some exceptions, residential rental unit rent increases may not exceed the lesser of local CPI² plus 5%, or 10%. Base rent is set at March 2019, with allowable increases through January 2020 of the annual allowable adjustment. If there is a more restrictive local rent control, AB1482 doesn’t apply.

RENT INCREASES CAPPED AT LESSER OF: CPI + 5%, or, 10% PER ANNUM.

First, AB 1482 adds Civil Code (“Civ C”) §1947.12. Operative January 1, 2020. Rents are rolled back to March 15, 2019, with a CPI+5% increase allowed to March 15, 2020. Residential real property means “any dwelling or unit that is intended for human habitation.” *Civ C* §1954.51. The owner of such property does not include mobilehome parks or mobilehome owners. “Owner” does not include the owner or operator of a mobilehome park, or the owner of a mobilehome or his or her agent. *Civ C* §1954.51

New *Civ C* §1947.12 states that rents shall not exceed the lesser of: (i) CPI plus 5%; or, (ii) 10%. This is an annual adjustment. Tenants for 12+ months cannot be subject to increases in more than two increments over that 12-month period. New tenants’ initial rents are set by the owner (per existing Costa-Hawkins de-control statutes). AB1482 applies after inception of tenancy. Subleasing if allowed, cannot exceed the rents allowed by AB1482.

¹ AB1482 is facially unconstitutional. Simply, AB1482 contains no “safety valve” allowing appeal for relief from confiscation imposed by a fixed ceiling. The ceiling is incapable of adjustment on its face. The California Supreme Court in *Birkenfeld v. City of Berkeley*, said that permanent rent controls require a prompt procedural remedy to avoid confiscatory fixed rent ceilings. For example, new owners with considerable property tax reassessments? They are barred from even asking for more, despite huge added expense which cannot be avoided. AB1482’s absolute bar to relief is a plain violation of due process of law. It is surprising that this fatal, elementary defect was not previously identified by authors and proponents. AB1482 is clearly, facially, unconstitutional. We expect federal court challenges soon.

² “Percentage change in the cost of living” means 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 United States Bureau of Labor Statistics. If a regional index is not available, the California Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations, shall apply.”

EXEMPTIONS TO THE RENT CONTROL PORTION OF AB1482

The law does not apply to certain residential rental properties such as deed restricted housing, regulatory restrictions specified in an agreement with a government agency, or other recorded document limiting tenancy for affordable housing or subsidies; Student Dormitories; Rent controls with greater rent increase restrictions; housing permitted for occupancy within the past 15 years. Again, the law does not apply to mobilehome parks, or mobilehome owners.

Also exempted are units can be transferred independent of other titled-units, if the owner is not a real estate investment trust (see Internal Revenue Code §856), a corporation or a limited liability company where one member is a corporation. Note that partnerships, sole proprietors, and trusts are not included in this list, meaning that they are exempt if the notices required (set forth below) to be given to the tenants is provided. Duplexes are also exempted if owner occupied.

For residential rental properties that are exempt, a Notice of Exemption is required. Owner must give notice of the exemption with this language:

“This property is not subject to the rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12 (c)(5) and 1946.2 (e)(7) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.”

This notice applies only if the residential real property unit is subject to the law. Park owners and for park-owned rental homes, this language is not necessary. All parks and mobilehomes are exempt.

If the residential rental property is covered by the law, what if you collected more than allowed before the bill becomes effective on January 1, 2020?

1. If rents increased by more than allowed between March 15, 2019, and January 1, 2020, both of the following shall apply:
2. You must roll rent back to March 15, 2019, effective January 1, 2020, then add up to CPI +5%. As the law takes effect January 1, 2020, this action can be taken as soon as the bill is signed. If this is a rent reduction, and as the law specifies the effective date of the rent, additional notices should be given to explain the actions and explaining the applicable law. This may ameliorate confusion, complaints and needless anxiety.

Interestingly, the bill then says that “[A]n owner shall not be liable to the tenant for any corresponding rent overpayment,” and this assumes the correction, if any to the rent levels, have been made.

What if you collected less than allowed before January 1, 2020?

If the residential rental property is covered by the law, and if you increased the rent on or after March 15, 2019, but prior to January 1, 2020, by less than CPI+5% you may increase the rental rate by

no later than March 14, 2020 (twice within 12 months of March 15, 2019), up to the balance to total CPI+5%.

JUST CAUSE TERMINATION OF RESIDENTIAL TENANCY

AB1482 *also* applies to residential rental units. It *does not apply* to mobilehome tenancies or mobilehomes.³

If the residential rental property is covered by the law, *Civ C §1946.2* says that *after continuous tenancy for 12 months, tenancy termination requires “just cause.”*

What Is Just Cause? There are two kinds of termination: “At fault” and “No fault.”

At-fault termination. If the residential rental property is covered by the law, default in the payment of rent. Breach of covenant after failure to comply with a 3-day cure notice, and 3 day notice to quit. Creating a nuisance. Committing “waste” (property damage which affects property value). Or, where a written lease terminates after January 1, 2020, and tenant refuses an extension or renewal for a “similar duration” with “similar provisions.” Criminal activity. Criminal threats (Penal Code §422) directed at management. Subleasing where prohibited. Refusal to allow entry (*Civ C §§1101.5, 1954, H & S Code §§13113.7, 17926.1*). Unlawful purpose. Ex-employee holding over. Failure to vacate per tenant notice (*Civ. Code §1946*).

No-fault just cause. If the residential rental property is covered by the law, this exemption applies when the owner’s family intends to occupy the unit, or if the tenant agrees or if the lease allows; withdrawal of the residential real property from the rental market; demolition or substantial remodel of the property, if work cannot be done in a safe manner without vacation of the tenant for 30+ days; in the event that vacation required by a government or court order, or ordinance. No relocation (additionally required) is paid to the at-fault tenant who caused vacation.

Relocation expenses:

If the residential rental property is covered by the law, Owner has the duty to provide relocation expense for “No fault” just cause termination. Owner must pay tenant relocation assistance or a rent waiver equal to one month’s rent in effect when termination notice served, paid within five 15 calendar days. Or waive the final month’s rent. If a tenant fails to vacate, the actual amount of any relocation or waiver is recoverable as damages in the unlawful detainer.

Exemptions: Does not apply to the owner or operator of a mobilehome park, or the owner of a mobilehome or his or her agent., under Cal Civ Code § 1954.51, and does not apply to the following types of residential real properties or residential circumstances:

Transient and tourist hotels. (*Civ. C §1940(b)*). Housing in a nonprofit hospital, religious, extended care, licensed residential care facility for the elderly (H&S §1569.2), adult residential facility (Title 22, Div. 6, Ch. 6, Manual of Policies and Procedures). Student Dormitories. Shared unit, where

³ Note, that mobilehome tenancies are already subject to the good cause termination requirements specified in the Mobilehome Residency Law, *Civ C §798.56*.

tenant shares bathroom or kitchen facilities with the owner who resides at the unit. Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than two units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit. Duplexes (same as before). Housing that has been issued a certificate of occupancy within the previous 15 years.

If the residential rental property is covered by the law, other exemptions apply, including residential real property that is alienable separate from the title to any other dwelling unit, provided that both of the following apply:

1. The owner is not a real estate investment trust, as defined in Section 856 of the Internal Revenue Code, a corporation, or a limited liability company in which at least one member is a corporation (same as before). The notices set forth above must be provided.

Notices Required: Tenancies before July 1, 2020: the notice below can be in the rental agreement; tenancy commenced or renewed after July 1, 2020, The notice must be in the rental agreement, an addendum or written notice *signed by the tenant, leaving a copy with the tenant.*

Date of Notice: No later than August 1, 2020, or as an addendum to the lease or rental agreement.

2. The following notice shall be 12-point type, including:

“California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all of the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.”

Local Ordinances: These provisions *do not apply* to residential real property subject to just cause termination by ordinance passed before September 1, 2019 (local ordinance applies); units subject to just cause termination adopted or amended after September 1, 2019, that is more protective. “More protective” means just cause terms are consistent with this bill. The ordinance provides higher relocation amounts, additional tenant protections.⁴

So, the good news is that AB1482 does not apply to mobilehome parks and mobilehomes. But this law may be a sign that future legislation addressing the issue of rent control in mobilehome parks is possible. Leasing is the best strategy to vest rights and protections for both owners and tenants for long term assurances and secure investments.

⁴ In the late 1970's, a respected Superior Court Judge, Jerry Pacht, sat on the trial bench in Los Angeles County. A noted “activist judge.” He once dismissed a charge of public drunkenness against a defendant, ruling that alcoholism was a disease and not a crime. He touched our industry too, raising many eyebrows on this side of the bar. Judge Pacht once ruled that a month to month tenancy could not be terminated without cause, despite state law. He said that without cause, termination was inherently arbitrary. His ruling is now state law. Rest in peace, Judge Pacht.