

NOVEMBER 5, 2019

LAW ALERT

LANDLORDS AND TENANTS AND REGULATIONS: OH MY!

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We're not in Kansas anymore! The California Legislature adopted several bills this year impacting landlord-tenant law that will take effect January 1, 2020. While most attention has been given to AB 1482, which adopts statewide just cause for eviction regulations and caps some rent increases, new bills also prohibit discrimination against Section 8 voucher holders, expand notice periods, and protect veterans.

AB 1482: TENANT PROTECTION ACT OF 2019

AB 1482 prohibits residential rental property owners of covered units from terminating a tenancy unless the property owner has a "just cause." The law contains two categories of just causes—at-fault causes (i.e., where the tenant is at fault for violating lease terms or state laws), and no-fault causes (i.e., where the property owner wants to recover possession of the property regardless of the tenant's actions). At-fault just causes include: failure to pay rent, breach of the lease, criminal activity at the property or against the owner, assignment and subletting in violation of the lease, and refusal to allow the owner to enter the property.

No-fault causes include owner occupancy, occupancy of the unit by certain members of the owner's family, withdrawal of the unit from the market (Ellis Act), complying with a government order related to habitability of the building, and intent to demolish or substantially remodel the property. AB 1482 requires that property owners provide tenants with one month's rent as relocation assistance in the event of a no-fault termination.¹

The just cause provisions of AB 1482 only apply after a tenant has occupied the unit for 12 months. However, if an additional occupant is added to the lease within 24 months, then the just cause provisions do not apply until either: (i) all tenants have resided in the unit for 12 months; or (ii) at least one tenant has resided in the unit for 24 months or more.

AB 1482 also establishes a cap on annual rent increases for covered units and prohibits more than two rent increases in any 12-month period. The annual cap on rent increases is 5% plus the increase in the consumer price index published by the federal government (April to April), but no more than 10% per year.

The law expressly allows for local rent or price controls that are more restrictive of annual rent increases than AB 1482.

AB 1482 applies to all rent increases on covered units that occurred on or after March 15, 2019. If rents were increased after March 15, 2019, the rent on January 1, 2020 is reduced to the rent as of March 15, 2019 plus the maximum increase allowed by AB 1482; the property owner does not have to refund to the tenant any rent a tenant paid based on a rent increase between March 15, 2019 and January 1, 2020.

The just cause protections and the rent cap limitations of AB 1482 do not apply to units that are:

- issued a certificate of occupancy in the previous 15 years;

¹ At least one lawsuit has been filed challenging this provision of AB 1482.

- dormitories owned by an educational institution;
- affordable housing restricted by a deed covenant, regulatory agreement or other recorded document;
- single-family homes or condominiums (unless the owner is a real estate investment trust, a corporation, or a limited liability company where at least one member is a corporation), and so long as the tenants are given proper notice of the exemption; and
- duplexes where the owner occupied one of the units as the owner's principal residence at the commencement of the tenancy and continues to occupy the property.

In addition to the units listed above, the following units are also exempt from the just cause protections of AB 1482:

- units covered by a local just cause ordinance if the ordinance was adopted before September 1, 2019, or a local ordinance that is more protective;
- transient and tourist hotel occupancies;
- housing in a nonprofit hospital, religious facility, extended care facility, licensed care facility for the elderly or an adult residential facility;
- housing where the tenant shares bathroom or kitchen facilities with the owner and the housing is the owner's principal residence; and
- owner-occupied homes where the owner rents no more than 2 units or bedrooms, including accessory dwelling units.

AB 1482 is silent regarding enforcement. Presumably, tenants may raise the lack of a just cause for eviction, or a refusal to pay an excessive rent increase, as an affirmative defense to eviction, but this is not stated. Tenants may be able to bring a civil action against a landlord for violation of the rent cap, but again, the law is silent. Notably, the Governor's October 27, 2019 statewide emergency declaration may limit rent increases to no more than 10% above the amount charged prior to the declaration based on Penal Code section 396. Thus, the Governor's

declaration may provide some protection against rent increases prior to the effective date of AB 1482.

OTHER NOTABLE LEGISLATION

AB 1110 will require that landlords give tenants at least 90 days' notice before imposing a rent increase greater than 10%, rather than 60 days' notice.

AB 1188 establishes procedures for a tenant to allow a person at risk of homelessness to occupy the tenant's unit as a lodger. The tenant must obtain the consent of the landlord before allowing a person at risk of homelessness to move in as a lodger; nothing in the legislation requires a landlord to consent.

AB 1399 makes changes to the Ellis Act to clarify that the date of withdrawal of a property from the rental market is the latest termination of all of the tenants. This could potentially impact the duration of the tenants' rights to damages and right to return to the property if the units are later re-rented.

SB 222 and SB 329 prohibit discrimination based on receipt of Section 8 and other voucher-based assistance, define "veteran or military status" as protected under fair housing and employment laws, and apply fair housing laws to short-term rental platforms.

SB 644 limits the amount of a security deposit that a property owner can require of a service member who will reside in the unit to one month's rent for an unfurnished unit and two month's rent for a furnished unit, unless the service member has poor credit or a history of damage to rental property.

SB 18 maintains the requirement that tenants residing in property that is subject to foreclosure be given a 90-day notice of termination.

For more information on landlord-tenant laws, including eviction regulations, rent caps, and impacts on cities and operators of affordable housing, please contact Karen Tiedemann, Justin Bigelow, or any other Goldfarb & Lipman attorney at 510-836-6336.