

National Apartment Association

# Tenant Protection Act of 2019 AB 1482

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A Professional Corporation



# What is AB 1482?

- ▶ California AB 1482 mandates state-wide rent control and just cause eviction. This webinar highlights affected properties subject to the new law. As well as breaking down the two components:
  - ▶ A. Just Cause Termination
  - ▶ B. Rent Control



# A. JUST CAUSE TERMINATION PROPERTIES EXEMPT

- ▶ All units EXEMPT to the Just Cause component:
- ▶ 1. Existing property subject to a local ordinance requiring just cause for termination adopted on or before September 1, 2019.
- ▶ 2. Transient and tourist hotel occupancy as defined in Section 1940 subdivision (b);
- ▶ 3. Nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly (H&S §1569.2), adult residential facility (State Dept Social Services Manual of Policies and Procedures Title 22, Chapter 6 of Division 6);
- ▶ 4. Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive;
- ▶ 5. Housing accommodations in which the tenant shares a bathroom or kitchen facilities with the owner who maintains their principal residence at the residential real property;
- ▶ 6. Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than 2 units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit;
- ▶ 7. A duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues residency;
- ▶ 8. Housing issued a certificate of occupancy within the previous 15 years (a rolling 15 years with continue to shift) – Properties built after January 1, 2005, are not subject to this new law.
- ▶ 9. Residential real property that is alienable separate from the title to any other dwelling unit (meaning Single Family Homes and Condos), provided (A) the owner is not any of the following (i) A REIT (as defined by IRS Code §856), (ii) A corporation, (iii) A LLC in which one member is a corporation and has special language contained in the lease.
- ▶ 10. Housing restricted by deed, regulatory restriction contained in an agreement with a govt agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in H&S §50093, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in H&S §50093 or comparable federal statutes.



# Notice and Time Requirements to Tenants as to Applicability

- ▶ If the property **is subject to AB 1482**, the Lease or notice to the residents must contain the following language, in no less than 12-point type:
- ▶ “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 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.”
- ▶ How to deliver this language:
  - ▶ a. For any tenancy commenced or renewed on or after July 1, 2020, as (i) an addendum to the lease or rental agreement, or (2) as a written notice signed by the tenant, with a copy provided to the tenant.
  - ▶ b. For any tenancy existing prior to July 1, 2020, by written notice to the tenant no later than August 1, 2020, or as an addendum to the lease or rental agreement.

If your property is exempt, we recommend an Addendum stating the exemption. This could eliminate confusion among onsite personnel and residents when a termination notice is served.

Provision must comply with Civil Code §1632 (language).



# 12 month exemption – Just Cause

- ▶ If your property does not have a property exemption, Just Cause Termination does not attach to the tenant until:
- ▶ a) A tenant has continuously and lawfully occupied a residential real property for 12 months,
- ▶ b) If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24 months, then this subdivision shall only apply if either of the following are satisfied:
  - ▶ (i) All of the tenants have continuously and lawfully occupied the residential real property for 12 months or more, or;
  - ▶ (ii) One or more tenants have continuously and lawfully occupied the residential real property for 24 months or more.



## C. What Does this All Mean?

Prior to AB 1482, an owner or landlord could serve a 30-60 Day Notice to Terminate Tenancy without any reason. Under the new law, a landlord will now need “just cause” to terminate the lease of a tenant that has lawfully occupied a residential property for at least 12 months. Under the new law, “just cause” is divided into two categories: “At-Fault” just cause, where the tenant has acted or failed to act in a way causing the termination, and “No-Fault” just cause, where the owner of the property, government, court, or local agency has made a determination ending the tenancy. As opposed to “At Fault” just cause, “No Fault” just cause termination may require the landlord to provide relocation assistance in the form of 1 month of rent.





# *At-Fault Just Cause Termination* includes (No Relocation Assistance):

1. Failure to pay rent;
2. Breach of a material term of the lease including failure to correct any violations of the lease after written notice is provided of the violation;
3. Maintaining, Committing or Permitting the maintenance or commission of a nuisance or waste pursuant to Code of Civil Procedure §1161;
4. Tenant's lease terminates after January 1, 2020, and after a written request or demand from the owner, the tenant has refused to execute a written extension or renewal of the lease for an additional term similar duration with similar provisions, provided that those terms do not violate any law;
5. Criminal activity by the tenant;
6. Assigning or subletting the property in violation of the tenant's lease;
7. Tenant's refusal to allow owner entry into the property;
8. Using the property for an unlawful purpose;
9. An employee, agent, or licensee's failing to vacate the property after termination as an employee, agent, or licensee; or
10. Tenant's failure to deliver possession of the property after providing notice or signing a written agreement with the landlord to vacate upon a certain date.



## AT- FAULT - Three Day Notice to Cure Covenant or Quit

For curable violations of a lease, an owner or landlord must notify the tenant of the violation with opportunity to cure the violation pursuant to Code of Civil Procedure Section 1161. If the tenant fails to cure the violation, the owner or landlord can then serve a Three-Day to Quit without an opportunity to cure to terminate the tenancy.





# *No-Fault Just Cause Termination* includes:

1. Intends to occupy the property by the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents; (must have termination language in lease)
2. Withdrawal of the property from the rental market;
3. The owner complying with either: (i) an order issued by a government agency or court relating to habitability that requires vacating the property, (ii) an order issued by a government agency or court to vacate the property; (iii) or a local ordinance that necessitates vacating the property; or
4. Intent to demolish the property, or substantially remodel\* the property in such a way that the work cannot be completed safely without vacating the property.

\*Substantially Remodel means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, asbestos, in accordance with applicable federal, state, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least 30 days. Cosmetic improvements alone, including painting, decorating, and minor repairs or other work that can be performed safely without having the residential real property vacated, do not qualify as substantial rehabilitation.



# *NO FAULT TERMINATION NOTICE Triggers Relocation Assistance or Waiver of Rent*

- ▶ For a No Fault Just Cause termination, the tenant is entitled, at owner's option, to either relocation assistance equal to one month's rent, or waiver of rent for the final month of the tenancy, with the exception that if a government agency or court determines that the tenant is at fault for the condition ordering the need to vacate, then the tenant is not entitled to relocation assistance.
- ▶ If an owner issues a notice to terminate a tenancy for no-fault just cause, the owner shall notify the tenant of the tenant's right to relocation assistance or rent waiver. If the owner elects to waive the rent for the final month of the tenancy, the notice shall state the amount of rent waived and that no rent is due for the final month of the tenancy.
- ▶ And any relocation assistance is to be provided directly to the tenant within 15 days of service of the notice.
- ▶ Should the tenant fail to vacate at the end of the notice to terminate, any rental assistance or waiver of rent is recoverable as damages in the eviction proceedings.
- ▶ Strict compliance by owner otherwise notice is void.



## B. RENT CONTROL PORTION

### *Prior Existing Rent Control Programs*

- ▶ A residential property is not subject to both a local ordinance and this new law.
- Prior enacted September 1, 2019 local rent control ordinances shall apply and are not affected by this new law.
- ▶ If a city passes or amends a local ordinance requiring just cause for termination of a residential tenancy, the local ordinance is applicable if the ordinance is “more protective”.



# Properties Exempt

- ▶ 1. Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income (H&S §50093), or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, (H&S §50093) or comparable federal statutes.
- ▶ 2. Dormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution.
- ▶ 3. Housing subject to rent or price control through a public entity's valid exercise of its police power consistent that restricts annual increases in the rental rate to an amount less than that provided by this statute.
- ▶ 4. Housing that has been issued a certificate of occupancy within the previous 15 years.
- ▶ 5. Residential single family home or condo provided that both of the following apply:
  - ▶ a. The owner is not any of the following:
    - ▶ (i) A REIT (IRS Code §856)
    - ▶ (ii) A corporation
    - ▶ (iii) a LLC, in which at least one member is a corporation.
  - ▶ b. Tenants have been provided written notice that the residential property is exempt from this section in the lease , or an addendum.
- ▶ 6. A duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.



# How Much Rent Can be Raised?

- ▶ Initial Rental Rate: For any new tenancy, the owner establishes the initial rental rate.
- ▶ Rent Renewals: If the same tenant remains in occupancy of a unit over any 12 month period, the gross rental rate shall not be increased more than 2 increments over that 12 month period, subject to the following:
  - ▶ a. Increase not more than 5 percent plus the percentage change in the cost of living\*\*, or 10 percent, whichever is lower, ...
  - ▶ B. ... of the lowest gross rental rate.
- ▶ In determining the lowest gross rental rate pursuant to this section, any rent discounts, incentives, concessions, or credits offered by the owner and accepted by the tenant shall be excluded.
- ▶ The gross per-month rental rate and any owner-offered discounts, incentives, concessions, or credits shall be separately listed and identified in the lease or rental agreement or any amendments to an existing lease or rental agreement.

\*\* "Percentage and 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 US Bureau of Labor Statistics. CPI from April 2018 to April 2019.

Not all Counties are published on April 1. More populated counties are published on April 1. Other counties are published on odd months, i.e. January, March, May, ...



## *Retroactive Impact on Rent Increases Occurring on or after March 15, 2019 to January 1, 2020*

- ▶ Ex Post Facto law – applies to Criminal and Not Necessarily Civil – Most likely valid
- ▶ During the time period of March 15, 2019 to January 1, 2020, if a landlord has raised the rent **by more** than 5% plus the regional CPI, then beginning January 1, 2020, the January 1, 2020 rent is reduced to the maximum allowable rent. Tenant is not entitled to any resulting overpayment in rent.
- ▶ Alternatively, during the same period, if a landlord increased the rent less than the permitted rate, then the landlord is allowed to increase the rental rate twice within 12 months of March 15, 2019, provided not exceeding the 5% plus CPI.



## D. Waiver of Rights

Any waiver by a tenant of the rights and protections afforded under the new law will be void as contrary to public policy.





# Lawsuit Challenging AB 1482

- ▶ Better Housing for Long Beach filed a lawsuit challenging AB 1482 and City of Long Beach's just cause ordinance. A link to the complaint is below.
- ▶ <https://www.inversecondemnation.com/files/bhlb-complaint.pdf>



# Questions:

Q. Rolling 15 years since Year of Construction – Does this apply on monthly go forward basis or an annual go forward basis? Monthly? Yearly?

A. Conservative approach will be daily. Check your Certificate of Occupancy date. If July 15, 2005 is the COO, then beginning July 15, 2020, the property is subject to this new law.

Q. Which CPI rate should we be utilizing for our calculation? Should we be using the bi-monthly CPI rate that comes out and adjust every 2 months, or can we adjust 1x per year.

A. Every April the CPI is adjusted compared to the last April. As for example, the regional CPI is computed based upon April 2018 compared with April 2019. If you have a regulatory agreement with a governmental agency, you follow the regulatory agreement when exercising rent increases.

Q. How and when should we be rolling back rental increases to our Current Neighbors? Also, my understanding of the bill (from Section 3), would mean that we should roll back the in-placed lease rents but we are not responsible to re-credit Current Neighbors the amount that was overpaid.

A. Correct, if a resident was increased more than the permissible rental rate, the rent is decreased effective January 1, 2020 to the permissible rental rate. NAA has a Notice of Rent Adjustment that you may provide your tenants. The notice can be provided in December. Since it's a rent decrease, anytime before January 1<sup>st</sup> is acceptable.



# Questions Continued

- ▶ Q. For AB 1482, my main question for Todd is best practices/approach for how to reconcile the state law with local rent control laws. For example, Mountain View allows “banking” of increases (AB 1482 does not) and increases in excess of 10% if a Landlord petition for an increase is granted, but AB 1482 is 5% + CPI – how do we reconcile these? Also, what is advice for best practice regarding the required AB 1482 notices? Since it’s a rolling date (15 years or older), it’s an administrative nightmare for large portfolios and also for properties that have multiple buildings with varying C of O dates.
- ▶ A. Under AB 1482, there is specific exemptions for properties subject to rent control. Meaning that no property can be subject to both AB 1482 and local rent control ordinance. I recommend placing a provision in the lease (or addendum) stating whether the property is or is not subject to AB 1482. If the property is exempt, that the property lists that exemption. As for example, if the building has a Certificate of Occupancy within the last 15 years, list that Certificate of Occupancy date. This will lead to less confusion as time marches. Then the onsite staff can understand whether or not the property is subject to AB 1482 or not. And that goes for the tenant.



# Questions Continued

- ▶ Q. I would like to know how the cap increases work for leases that are less than one year. The leases on our student properties are typically for 11 months and a week or 2 (not a full 12 months) and typically expressly say they do not renew. For students that want to stay/renew, they execute a brand new lease. I would think the caps apply to the new lease but they may not.
  - ▶ A. Providing that your property is not exempt, Rent Cap applies to all renewals. If your tenants vacate the apartment, and then return to the apartment, you can charge market rent. However, if your tenants do not vacate and are renewed, you may only increase the amount to the permissible rental amount (5% plus Regional CPI, but less than 10%). It does not matter that your lease states the lease does not expressly renew. Again, if your property is subject to the Just Cause Termination, the landlord may only terminate for Just Cause (Fault or No Fault reasons only).
- ▶ Q. RUBS – Big Gorilla in the Room
  - ▶ A. To be drafted.



# Thank You

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