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## **Tenant Protection Act of 2019 (AB 1482)**

### **What Is the Tenant Protection Act of 2019 (AB 1482)?**

California recently approved the Tenant Protection Act of 2019 (TPA) in an effort to help stabilize rent for California residents. Effective January 1, 2020, the TPA significantly changes traditional landlord/tenant relationships in two ways: (1) caps the amount that a landlord may increase the tenants rent during a 12 month period; and (2) requires “just cause” for evictions. This article will outline the TPA’s key provisions and discuss its potential impact on landlords, lenders and loan servicers.

#### Rent Limits

Beginning on January 1, 2020, landlords cannot increase the gross rental amount during a 12 month period, by more than **5% plus the cost of living** as determined by the regional CPI (in any event no more than a total of 10%).

- The gross rental amount cannot be raised more than two times in a calendar year, and the total cannot exceed the allowable increase.
- Any rent discounts, incentives, concessions, or credits offered by the owner and accepted by the tenant are excluded from the calculation of the gross rental amount (and should be documented in the lease).
- Additionally, a tenant that subleases a covered property also cannot raise the rent above the allowable rental rate.
- The landlord can adjust the rents to market rate after a tenant vacates the property.

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### Rent from March 15, 2019 – January 1, 2020

Although the law goes into effect on January 1, 2020, it applies retroactively to March 15, 2019. Thus, **landlords who raised rents between March 15, 2019 and January 1, 2020, must roll the rents back** to the allowable 12 month increase based on rent as of March 15, 2019 (i.e., March 15<sup>th</sup> rents + 5% + CPI). However, to the extent an owner collected rents between March 15, 2019 and January 1, 2020 over the allowable amount, it does NOT have to refund those amounts.

Many landlords chose to raise rents in anticipation of the January 1<sup>st</sup> effective date and, when the tenants refused to pay, initiated eviction actions. While not technically improper, some cities are lashing back. For instance, Los Angeles City passed a moratorium on evictions until the end of the year. Please feel free to contact Robert Finlay at [rfinlay@wrightlegal.net](mailto:rfinlay@wrightlegal.net) for additional information.

### Notice

In order to increase the rent, a landlord must give the tenant adequate notice in accordance with existing law (Cal. Civ. Code Section 827). The notice must be given in writing by mail or personal service and the notice must be given at least 30 days prior to the effective date of the increase.

### Exceptions

The only properties excluded from the rent limitations are:

- Housing that has been issued a certificate of occupancy within the last 15 years;
- Residential property that is alienable separate from the title to any other dwelling unit (***i.e., single family homes or condos***) provided that (1) the owner is not a real estate investment trust, a corporation, or an LLC with at least one member that is a corporation, **and** (2) the tenant has been provided with written notice that says:  
“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 (d)(5) and 1946.2 (e)(8) 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.”
- A duplex in which the owner occupied one of the units as the owner’s principal place of residency at the beginning of the tenancy, and continues to occupy the unit; and
- Housing restricted by deed, regulatory restriction contained in an agreement with a government agency of other recorded document as affordable housing for persons and families of very low, low, or moderate income;
- College dormitories; and
- Housing subject to rent control through a public entity’s valid exercise of its police power.

### Just Cause Eviction

For all tenants that lawfully and continuously occupy a property for 12 months (or if at least one tenant has occupied the property for 24 months), the landlord must have “just cause” to either evict the tenant or refuse to renew the tenant’s lease. There are two forms of just cause: (a) at-fault just cause and (b) no-fault just cause. If there is just cause, the tenant **must be notified** in a timely manner of the eviction or non-renewal of the lease. Finally, if the landlord evicts or declines to renew a lease with “no-fault just cause,” the Act requires the landlord to pay for relocation assistance to the tenant.

If the landlord is terminating the lease for a reason that may be fixed by the tenant, the landlord must first provide the tenant with written notice of the violation and provide the tenant with an opportunity to cure the problem.

### At-Fault Just Cause

A landlord may evict a tenant or refuse to renew a fixed term lease if the tenant is “at fault”, which includes:

- Non-payment of rent;
- A breach of a material term of the lease;
- Maintaining, committing, or permitting a nuisance;
- Committing waste;
- If the lease term ends and, after a demand from the landlord, the tenant refused to execute a renewal or extension of the lease;
- Criminal activity by the tenant;
- An assignment or sublease of the lease that violates the terms of the lease;
- Refusal to allow the owner to enter the premises;
- Use of the property for an unlawful purpose;
- If the tenant was an employee, agent, or licensee of the landlord, failure to vacate the premises after the termination of such relationship; and
- If the tenant previously provided the landlord with notice to vacate and the tenant fails to deliver possession of the property.

### No-Fault Just Cause

A landlord can evict a tenant or refuse to renew a lease for “no-fault” reasons, which include:

- The owner intends to use the property for themselves, their spouse, domestic partner, children, grandchildren, parents or grandparents;
  - However, if the lease is entered into on or after July 1, 2020, the tenant must agree in writing OR the lease must provide a provision that allows for the termination of the lease in the event of this situation;
- Withdrawal of the property from the rental market;
- Intent to demolish or substantially remodel the property; and



- In compliance with the law (such as an order relating to habitability, an order to vacate, or a local order that necessitated the vacating of the residence).

#### Relocation Assistance

If the tenant is evicted or the lease is not renewed due to “No-Fault Just Cause,” the landlord ***must*** provide the tenant with relocation assistance. The relocation payment must be the amount of ***one month’s rent*** when the owner issued the notice to terminate, and the Landlord ***must inform the tenant of their right to relocation assistance***. It may be provided either as (a) direct payment to the tenant within 15 days of service of notice OR (b) waiver of the last month’s rent prior to the time when that payment is due (the notice shall state the amount of rent waived and that no rent is due).

#### Exceptions to Relocation Assistance

An owner is not required to provide the tenant with relocation assistance if the tenant was evicted due to “At-Fault For Cause” or if the government has already determined that the tenant is the cause of the eviction (such as an order relating to habitability, an order to vacate, or a local order that necessitated the vacating of the residence). Additionally, if the tenant fails to vacate the property after no-fault termination notice is given, relocation assistance must still be made; however, it may be recovered as damages. Finally, if there is another law that requires relocation assistance, this payment of relocation assistance may be credited to such other required payment.

#### Notice to the Tenant

***For covered properties, the landlord must provide notice to the tenant that the residential real property is subject to this section.*** That says (in 12 point font):

“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.”

If the lease begins on or after July 1, 2020, the notice can be (1) an addendum to the lease or agreement or (2) a written agreement signed by the tenant, with a copy provided to the tenant. If the lease exists prior to July 1, 2020, written notice must be given to the tenant no later than August 1, 2020, or as an addendum to the lease or rental agreement.



### Properties Excluded From the Just Cause Requirement

The only properties excluded from the “just cause” requirement are:

- Housing that has been issued a certificate of tenancy within the previous 15 years;
- Residential real property that is alienable separate from the title to any other dwelling unit (**i.e., single family homes and condos**) and (1) the owner is not a real estate investment trust, a corporation, or an LLC where at least one member is a corporation AND (2) the tenant was given written notice that the property is exempt:
  - “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 (d)(5) and 1946.2 (e)(8) 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.”
- Single-family owner occupied residences (including one where the owner-occupant rents or leases no more than two units or bedrooms);
- 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 and continues tenancy;
- Transient and tourist hotel occupancy;
- Housing accommodations in a nonprofit hospital, religious facility, extended care; facility, licensed residential care facility for the elderly, or an adult residential facility;
- Dormitories operated by higher education or a kindergarten and grades 1-12 inclusive;
- Housing accommodations where the tenant shares a bathroom and/or kitchen with the owner; and
- Housing restricted by deed, regulatory restriction contained in an agreement with a government agency or otherwise reflected as affordable housing.

### **The Law Applies to My Property, What Should I do?**

First, review all your properties to see if they are covered by the new law. If this law applies to your property, we suggest that you take the following steps in order to comply with the law:

- Update leases (or add addendums) regarding:
  - That the property is not covered;
  - That a covered property is subject to limitations on rental increases;
  - Add a provision to new leases or renewals that states that the tenant may be evicted if the current (or future) landlord decides to put a family member in the unit.; and
  - Consider putting in a provision that prohibits subleasing.
- Update any termination notices and notices to quit;
- Draft a relocation notice;
- Calculate rent increases and calendar the dates when rent can be increased;



- Consider a strategy to terminate tenancies of problematic tenant's prior to the 12 month (or 24 month deadline)

### What if my city has its own rent control laws?

If the local law is "more restrictive" (meaning that the local law contains all of the provisions of the Tenant Protection Act of 2019 and has additional provisions), the local law is enforceable. However, if it is "less restrictive" (meaning it does not contain all of the provisions of the Tenant Protection Act of 2019), the Tenant Protection Act of 2019 governs rather than the local law.

## **How Does the New Law Impact Lenders and Loan Servicers?**

While the law is intended to impact landlord/tenant relationships, it could spill over to impact lenders and loan servicers in a variety of ways:

- **REO Properties (covered):** A single family property or condo that is rented and reverts at a foreclosure sale to a real estate investment trust, corporation or a LLC where at least once member is a corporation, is likely covered by the TPA. Likewise, if the REO property does not fall under one of the other exceptions, it would likewise be covered by the TPA. If so, the tenants are entitled to the protections of the TPA, including rental limits and the requirement for "just cause" evictions. Upon foreclosing, we recommend immediately sending any required notices about whether the property is covered under TPA (in case the prior owner failed to do so).
  - **Note** – the TPA protections would arguably apply to a SFR where the prior owner was renting an illegal unit.
  - **Possible Exposure** – anyone taking back a covered property at foreclosure could be liable for collecting rents in violation of the TPA *if* the prior owner had raised rents above the allowable limits.
- **REO Properties (not covered SFR or Condos):** If title at the foreclosure sale is NOT taken by a REIT, corporation or LLC (with one member who is a corporation), the owner must provide the required notice that the property is not covered.
- **Evictions:** In addition to the "just cause" limitations on covered properties, all evictions in Los Angeles and other cities sympathetic to tenants could be delayed in the short term while the cities and courts differentiate between evictions involving the TPA and standard post-foreclosure evictions.
- **Lending on Covered Properties:** The annual amount of rents on rental properties is a key element to determining a rental property's value. A property's value often determines allowable loan limits. An overvalued property as a result of inflated rents could affect a lender's decision to lend, the amount of the loan or its' rate. As a result, its' important for lenders on covered properties to know whether the prospective property's rents are compliant with the TPA.



Lenders considering loans on covered properties may want to have the borrower sign an estoppel certificate, certifying that the rents fall within the allowable rental amounts under the TPA. Lenders could also require that the borrower recertify annually that rents are still compliant. The Deed of Trust could also be drafted to state that a failure to do so could be grounds for default under the loan.

- **Conflicting Laws:** In addition to complying with the TPA, lenders and loan servicers must also be aware of existing local ordinances that offer tenants additional protections.
- **Copy Cat Local Ordinances:** Some cities, counties and local municipalities are taking steps to enact their own versions of the TPA. Of course, some will “tweak” the TPA, offering greater protections to tenants. Lenders and loan servicers will need to be aware of these local ordinances to see whether they impact a particular property.

For any additional questions regarding the implications of this law on your property contact Robert Finlay at [rfinlay@wrightlegal.net](mailto:rfinlay@wrightlegal.net) or at 949-477-5050.

