



How statewide rent and eviction control can impact your practice

The Tenant Protection Act of 2019

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It is no secret that California is in the midst of a housing crisis, with the average tenant spending over one third of their income on rent, and homelessness increasing every year. In fact, homelessness rose 2.7% across the United States from 2018 to 2019, largely due to the over-16% increase in homelessness in California. Governor Gavin Newsom even referred to California's homelessness as a "disgrace" in this year's State of the State address and vowed to make it his administration's top priority.

State lawmakers and previous administrations have discussed the housing crisis, including resulting housing instability and homelessness, but have generally left it to local municipalities to enact ordinances to address rent-increase and eviction protections. Some of the only statewide legislation passed in the last thirty-five years regarding tenant protections were specifically enacted to *restrict* them. The two that have

impacted tenants the most are the Ellis Act of 1985 and the Costa Hawkins Rental Housing Act of 1995. The Ellis Act was enacted to allow landlords to evict residential tenants to "go out of the rental business" even if not listed as a just cause for eviction under local ordinances. (Gov. Code, § 7060-7060.7.) The Costa-Hawkins Rental Act of 1995 has arguably had the greatest impact on local ordinances. In particular, Costa-Hawkins precludes limitations on rental rates at the establishment of a new tenancy and prohibits the establishment of any rent increase restrictions over residences built after 1995 as well as single family homes or condos. Californians voted against repealing Costa-Hawkins in 2018, but may be voting to repeal again in November 2020.

Prior to the Tenant Protection Act of 2019 (or "Act"), it was incumbent upon cities across California to pass local ordinances to respond to the housing crisis, with some of the strongest being in Oakland, San Francisco, Berkeley, Los Angeles, and Santa Monica. Every year more and more cities were passing rent and/or eviction controls, but many attempts were also defeated, leaving many Californians vulnerable to rent hikes and eviction without cause.

In cities without rent ordinances, landlords were able to raise the rent after a lease term expired or on short notice with month-to-month tenants. (Civ. Code, § 827 (b).) As long as landlords provided proper notice, they were able to increase the rent to any amount. Landlords were also able to evict tenants for any purpose as long as they gave proper notice, with few exceptions. (Code Civ. Proc., § 1161, et seq.)

As someone who has represented tenants throughout her career, it has been devastating to witness countless tenants in jurisdictions without rent ordinances become displaced with little recourse due to rent hikes or evictions without cause. Thus, the Tenant Protection Act of 2019 is a major victory for all Californians.

What is the Tenant Protection Act of 2019?

In 2019, California passed the Tenant Protection Act, which created statewide eviction and rent control. Beginning January 1, 2020, landlords have been prohibited from evicting tenants absent one of fifteen enumerated just causes (Civ. Code, § 1946.2), and from increasing rent more than five percent per year plus the cost of living for the area, up to a maximum of ten percent (Civ. Code, § 1947.12).

Several types of housing are exempt from the just-cause eviction protection and/or rent-increase cap provided by the Tenant Protection Act. The most notable

exemptions from both eviction- and rent-increase protection are: Short-term occupancies (less than twelve months); duplexes in which the owner occupies one of the units as the owner's principle place of residence; newer construction in which a certificate of occupancy was obtained less than fifteen years ago; tenancies that are less than a year long; and single family homes/condominiums unless the property is owned by a corporation or a limited liability company with corporation members and the landlord has informed the tenant of the home's exempt status in writing. It should be noted that while the law states that housing is exempt "that has been issued a certificate of occupancy within the previous 15 years," it does not specify when that 15 years runs from. (Civ. Code, § 1946.2.)

What is the impact on existing rent ordinances?

The Tenant Protection Act creates a minimum level of eviction- and rent-increase protection. If a unit is already covered by stronger local just-cause eviction and/or rent increase regulation, the unit remains subject to those local regulations and the statewide law does not remove or replace those tenant protections.

For instance, San Francisco regulations do not exempt duplexes, when an owner occupies one of the units, from rent and eviction controls, and does not exempt single family homes from just-cause protection even if owned by an individual. Moreover, San Francisco rent increases are limited to 60% of the percentage increase in the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose region. This number is generally between one and three percent annually, which is considerably less than what California's Tenant Protection Act allows for. Consequently, San Franciscans remain protected by the stronger ordinance.



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However, San Francisco's rent increase restrictions only apply to units that obtained a Certificate of Occupancy prior to June 13, 1979, so California's Tenant Protection Act would apply to units that obtained a certificate of occupancy between June 13, 1979 and fifteen years prior.

If a new rent ordinance is enacted after September 1, 2019, it must actually offer more protections than the state law and must also make a binding finding within the local ordinance that the ordinance is more protective than the provisions of the state law.

How might the Tenant Protection Act impact my practice?

My practice primarily focuses on representing tenants who have been the victims of significant habitability defects, harassment, physical intimidation, unlawful rent increases, and fraudulent evictions. Fraudulent evictions occur when a landlord gives a tenant notice of an eviction containing an enumerated just cause, but does so with ulterior motive. An example I often encounter in my practice is when a landlord gives a tenant a notice to quit based on the owner moving into the unit when the owner does not really intend to move in. In most of these cases, the tenant is either constructively evicted or forcibly ousted from their home.

If a tenant is forced to abandon their rent- and eviction-protected unit under any of these circumstances, one of the major damages a jury can consider is the future "loss of use" damage. I have written about this previously, but I think we are due for a refresher. The loss-of-use damage is essentially calculated by multiplying the rent differential by the amount of time a jury decides the tenant would have remained in the unit but for the tenant's ouster. The rent differential is the difference between the fair market value of the unit at the time of the tenant's ouster (determined by a real estate appraisal expert) and the actual rent-controlled rent the tenant was paying. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875.)

This damage has been established by case law. "The damages recoverable for

wrongful eviction, actual or constructive, include whatever amounts are necessary to compensate the tenant for the detriment proximately caused by the eviction or likely to result therefrom. The measure of damages, as a general rule, is the value of the term, less the rent reserved. In addition to the general damages representing the value of the tenant's unexpired term, recovery may be had for expenses of removal." (*Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 926; quoting 42 Cal.Jur.3d, Landlord and Tenant, § 132, p. 155-156.) "The measure of damages should be the difference between the fair rental value of the premises if they had been as warranted, and the fair rental value as they were during the occupancy in the unsafe or unsanitary condition." (*Stoiber v. Honeychuck* (1980) 101 Cal. App.3d 903, 915.) In *Castillo v. Friedman*, a fraudulent relative-move-in case in a rent- and eviction-protected jurisdiction, the Court affirmed the trial judge's determination that: "[P]laintiff's loss can best be measured by the difference between market value and the rent-controlled rate of the subject premises" for the two-year period plaintiff would have continued living there. (*Castillo v. Friedman* (1987) 197 Cal.App.3d Supp. 6, 20-21.) The Court of Appeals of California, First District, recently affirmed these earlier cases in a sham relative-move-in case in 2019. (See *DeLisi v. Lam* (2019) 39 Cal.App.5th 663.)

Since the Tenant Protection Act was just recently enacted, it may take a few years for tenants to have a substantial rent differential depending on the jurisdiction and the existing rent the tenant was paying at the time the Act went into effect. Unfortunately, tenants whose landlords have violated the Tenant Protection Act are not entitled to increased damages available in many local rent ordinances such as the trebling of damages, punitive damages, or attorney fees.

In addition to increased damages available for injured tenants, plaintiffs' attorneys throughout California should consider expanding their practices to include unlawful detainer defense. Most unlawful detainer trials occur within two months of an unlawful detainer complaint

being served on a tenant and have shortened time on discovery and motion work. For many attorneys, especially those craving courtroom and trial experience, this can be a new and worthwhile practice area to explore. Most importantly, without attorneys available, the Act will just amount to words on paper.

Moving forward

The Tenant Protection Act of 2019 is an important win in the fight for tenant rights. Nevertheless, there are some very specific additions that lawmakers should consider. One of the most problematic issues that tenant advocates foresee with the just-cause protections of the Act is the lack of a time frame for owner/relative move-in or "withdrawal of the residential real property from the rental market." For instance, a landlord can move in or "withdraw the residential real property from the rental market" for a month (or a day), then move out and increase the rent to market rent, but would still be in compliance with the Act.

Another concern is the Act's failure to create an administrative body to provide tenants with a low/no cost option to challenge an illegal rent increase. As it stands, a tenant would have no other option than to receive an illegal rent increase, not pay it, then hire an attorney to defend an eviction on the grounds that the increase was illegal.

The Act also does not contain any additional compensation for tenants who are injured by a landlord's violation of the Act. Several rent ordinances contain provisions that automatically treble an aggrieved tenant's economic damages and provide attorney fees for either the prevailing party or prevailing tenant. Plaintiffs' attorneys are then able to represent tenants whose damages may otherwise be low, but who have suffered from significant harm. Such provisions can also act as a deterrent to landlords.

Finally, without representation in unlawful detainer proceedings, landlords will continue evicting tenants without cause, as pro per tenants will have difficulty defending themselves in court. These tenants are still at risk of homelessness. Consequently, in furtherance of California's goal to end homelessness, California should



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enact a statewide tenant right to counsel for eviction defense with increased funding for nonprofits to handle these cases. San Francisco is currently the only city in California (and second in the nation) to have a right to counsel for tenants being evicted. All Californians should have this right.

In sum, the Tenant Protection Act of 2019 is a step in the right direction for tenants and those who represent them, but the battle is not over.

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Service by the Bar Association of San Francisco since 2012. Josephine proudly serves on the Board of Directors of San Francisco's Eviction Defense Collaborative, the first organization in the country to provide legal assistance to clients facing an eviction as part of a coordinated, single agency anti-displacement strategy. Josephine has also been selected by the National Trial Lawyers Top 40 Under 40.

