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The new housing laws that matter most in 2020

New laws focus on tenant protections and housing for low-income families and the homeless

By FRANCES CAMPBELL

First, a note. The author realizes that new housing laws may seem, at first, to be of little interest to attorneys prosecuting general tort cases on behalf of consumers. But consumers have one important thing in common – they live inside houses and apartments. Based on anecdotal evidence, the author concludes that some tenants who have suffered injuries or other wrongs in the places in which they live may be reluctant to file lawsuits against their landlords because of the fear that they could be evicted. This concern should be much reduced by the passage of Assembly Bill 1482, The Tenant Protection Act of 2019, which puts in place rent controls and eviction protections in most rental units that were built more than 15 years ago.

California attorneys prosecuting premises-liability cases involving residential rentals can now inform prospective clients that, in many cases, their landlords will no longer be able to raise their rents excessively or evict them without cause. (Civ. Code, §§ 1946.2, 1947.12.) Although retaliatory evictions have long been prohibited in California (Civ. Code, § 1942.5), retaliatory eviction is a defense to unlawful detainer actions that needs to be pleaded and proven by the tenant in court, and it's a difficult defense to prove. As discussed in depth below, the new state-wide eviction-control scheme effectively shifts the burden to (most) landlords of (certain) rental units to plead at the outset of an eviction action a good reason to evict. (Civ. Code, § 1946.2, subd. (b).)



Homelessness

As of January 2018, 23.55% of the nation's homeless population was in California. (U.S. Interagency Council on Homelessness, California Homelessness Statistics <<https://www.usich.gov/homelessness-statistics/ca/>> [as of Jan. 5, 2020].) Across the country, regions with high rates of homelessness also have the highest housing costs. (Cowan, *How Does Homelessness in California Compare With Other States?* (Oct. 17, 2019) N.Y. Times <<https://www.nytimes.com/2019/10/17/us/homelessness-california-population-states-comparison.html>> [as of Jan. 4, 2020].)

Surprisingly, levels of homelessness do not correlate with levels of poverty. (*Ibid.*) For example, Mississippi has the highest poverty rate of any state, but its rate of homelessness is among the lowest, due to lower housing costs. (*Ibid.*)

And, apparently, poverty rates have been declining since 2010. (Janosko, *Poverty is Down – But Concerns About Homelessness Remain Up* (Oct. 17, 2019) National Alliance to End Homelessness <https://endhomelessness.org/poverty-is-down-but-concerns-about-homelessness-remain-up/> [as of Jan. 6, 2020].)

The Tenant Protection Act of 2019 is the natural legislative answer to the current housing crisis. A recent poll conducted for the Los Angeles Times and the Los Angeles Business Council Institute found that 95 percent of the voters questioned considered homelessness a serious or very serious problem. (Oreskes, et al., *95% of voters say homelessness is L.A.'s biggest problem, Times poll finds. 'You can't escape it'*, (Nov. 14, 2019) L.A. Times <<https://www.latimes.com/california/story/2019-11-14/homeless-housing-poll-opinion>> [as of



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Jan. 5, 2020].) Housing affordability was a top concern of 85 percent of the same voters. (*Ibid.*) About half of those polled mentioned housing affordability as one of the factors driving homelessness (*Ibid.*) The instincts of these polled voters were correct.

California and Los Angeles County in particular have higher rates of homelessness compared to other states, with growing homelessness tracking rising housing costs and rental rates. (William Yu, Homelessness in the U.S., California and Los Angeles (June 2018) pp. 65-71 (UCLA Anderson Forecast).) In response to these widespread voter concerns, in 2019 California and local governments passed a flurry of new housing laws. While many of these new laws are calculated to spur the creation of more housing, others seek to stabilize the rental housing market. For the purpose of this article, I only review the most important housing laws affecting California renters in 2020.

The Tenant Protection Act of 2019

The most important and sweeping of these laws is the Tenant Protection Act of 2019. Passed in October, Assembly Bill 1482 generally created state-wide rent stabilization coupled with eviction controls in most multi-unit residential housing complexes that are more than 15 years old. (Civ. Code, §§ 1946.2, 1947.12.) Meant as a response to an emergency situation, the Act is repealed by its own terms in ten years. (Civ. Code, §§ 1946.2, subd. (j), 1947.12, subd. (j); 1946.13, subd. (c).)

First, some background. What is rent stabilization? The terms “rent stabilization” and “rent control” are used interchangeably. The heyday of rent control in California is generally considered to be the late 1970s, when California municipalities, including Los Angeles, West Hollywood, Beverly Hills, and Santa Monica, started enacting rent control laws due to a critical housing shortage that was driving up rents and

displacing tenants. (See, e.g., L.A. Mun. Code, § 151.00.)

But the housing crisis of the late 1970s was not the first to be addressed by government legislation here. The first published California case involving rent control was *Bumgarner v. Orton* (1944) 63 Cal.App.2d Supp. 841, which involved a tenancy protected under federal law – the Emergency Price Control Act of 1942. (*Id.* at p. 843.) World War II created serious housing shortages and overcrowding in areas where workers moved to work for defense contractors. (See, e.g., Verge, The Impact of the Second World War on Los Angeles (1994) 63 Pacific Historical Review 3, p. 305.) To combat rising rents, rent stabilization and eviction controls were enacted as part of President Roosevelt’s 1942 “Seven-Point Economic Stabilization Program.” (Rosenman, The Public Papers and Addresses of Franklin D. Roosevelt, 1942 Vol. (1950) pp. 216-227.) In his “Message to Congress Asking for Quick Action to Stabilize the Economy,” the President, citing “the disastrous results of a runaway cost of living,” called for the enactment of federal regulations establishing “ceilings on rents for dwellings in all areas affected by war industries.” (*Id.* at p. 356.)

Price controls

The latest price controls put in place under the Tenant Protection Act of 2019 are somewhat weak compared to local, municipal rent stabilization schemes, which remain in effect. (Civ. Code, § 1947.12, subd. (k)(2).) Unlike local rent-stabilization ordinances that generally control rent increases by limiting them at rates below the cost of inflation, the Tenant Protection Act is not designed to allow persons of low-to-moderate income to remain permanently in their apartments. The Tenant Protection Act instead establishes very mild stabilization of rents, allowing increases of “5 percent plus the percentage change in the cost of living, or 10 percent, whichever is lower....” (Civ. Code, § 1947.12, subd. (a) (1).) This rent cap was calculated to slow

down displacement while not burdening landlords. In drafting the legislation, lawmakers looked at market-rent increases across California in jurisdictions that had no rent stabilization, and calculated that the proposed rent caps, if they had been applied annually in non-stabilized markets in the years between 2007 and 2017, would have increased the rents by 68.2 percent over that period, whereas market rents in these same markets for that same period actually increased only 15.6 percent. (Assem. Com. on Housing and Community Development, Rep. on Assem. Bill No. 1482 (2019-2020 Reg. Sess.) April 25, 2019, pp. 4-5.) The Act’s effect is to allow renters more time to adjust to the current economic realities that may, in fact, ultimately displace them. Its price controls will be effective to prevent sudden, building-wide evictions, affecting a large population at once, and will prevent “re-tenanting” of apartment buildings – the act of evicting all tenants so that an entire building can be “modernized” and re-rented to more affluent tenants.

Eviction controls

Price controls in rental housing are ineffective without eviction controls, for obvious reasons – if a landlord can’t raise a tenant’s rent, but can evict the tenant, the landlord will evict the tenant and rent to someone new who will pay more. Therefore, the Tenant Protection Act also includes eviction controls. Eviction controls are evictions allowed only for “just cause.” “Just cause” evictions are the opposite of “no cause” evictions, i.e., evictions based on 30-day or 60-day notices that give tenants no reason why their tenancies are being terminated. (Civ. Code, §§ 1946, 1946.1.) Until this year, every tenancy in a non-rent-stabilization jurisdiction could be terminated by a 30-day or 60-day notice, and the landlord did not need to share his reason for the eviction. Of course, evictions for discriminatory reasons are, and long have been, prohibited even under the general state unlawful detainer statutes.



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(See, e.g., *Abstract Inv. Co. v. Hutchinson* (1962) 204 Cal.App.2d 242, 255 [proof of defense to eviction action based on racial discrimination under the federal and state Constitutions should have been allowed at trial]; *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 755 [reversing unlawful detainer judgment where impetus for eviction was to exclude children from rental housing].)

Under the Tenant Protection Act, if a landlord seeks to evict a tenant from a building that is not exempt from the Act, the landlord's rights to evict are limited. The landlord must notify the tenant of the reason for the eviction, and in many cases, give the tenant an opportunity to cure any breach of the lease before gaining the right to evict him. (Civ. Code, § 1946.2, subs. (b) and (c).) "Just causes" for eviction under the Act are split into two categories: "at-fault just cause" and "no-fault just cause." (Civ. Code, § 1946.2, subd. (b).)

The "at-fault just cause" grounds for eviction are failure to pay rent; breach of lease; commission of a nuisance or waste; a tenant's refusal to enter into a subsequent lease with terms similar to his or her present lease; criminal activity at the rental property or crimes or criminal threats against the landlord, or using the premises itself for an unlawful purpose; subletting where proscribed by the lease; a tenant's refusal to allow the landlord lawful entry; the failure of the landlord's agent or employee to vacate upon termination of the employment; and a tenant's failure to vacate after giving written notice that he would do so. (Civ. Code, § 1946.2, subd. (b)(1).)

The "no-fault just cause" grounds for eviction are where the landlord intends that he or certain family members will themselves occupy the rental unit, withdrawal of the residential real property from the rental market, to allow a landlord to comply with a government order or local ordinance, or where a landlord intends to demolish or substantially remodel the unit. (Civ.

Code, § 1942.6, subd. (b)(2).) A landlord terminating a tenancy based on a "no-fault just cause" ground is required to notify the tenant of his or her right to relocation assistance and provide the tenant with relocation assistance equal to one month's rent. (Civ. Code, § 1946.2, subd. (d).)

When the Act applies

The Tenant Protection Act does not apply to certain classes of housing, notably single-family owner-occupied residences, including a residence in which the owner rents out no more than two units or bedrooms or accessory dwelling units, and a duplex in which the owner lives in one unit as his principal place of residence at the beginning of the tenancy. (Civ. Code, §§ 1946.2, subd. (e), 1947.12, subd. (d).) Single-family homes or condominiums not owned by an institutional owner are also exempted, so long as the landlords have provided written notice to their tenants that the rental units are exempted from the Act. (Civ. Code §§ 1946.2, subd. (e) (8), 1947.12, subd. (d)(8).) Without any statewide publicity directed to landlords of single-family dwellings informing them of their obligations to provide the detailed disclosure notices to their tenants required by Civil Code section 1946.2, subd. (e)(8), even tenants renting single-family houses and condominiums are likely to be protected from no-fault evictions for the immediate future, so long as they are represented by counsel familiar with this requirement.

Interestingly, landlords of all rental housing units subject to the Act are required to so inform their tenants. (Civ. Code, § 1946.2, subd. (f).) However, the law as written does not appear to provide any legal remedy for the landlord's failure to do so.

In general, it appears that the Tenant Protection Act will be a valuable tool, stabilizing the rental housing market in California. It is far from a radical measure, but is likely to provide some sort

of comfort to nervous tenants throughout the state.

All rent increases capped for 2020

For the year 2020, in certain counties, *all* residential rent increases are capped at 10 percent, and rents may not be increased even after evictions.

There is also good, stabilizing news for tenants in rental housing not covered by the Tenant Protection Act of 2019, but it is borne of bad news overall. Due to the "unprecedented" wildfires California has faced since 2017, Governor Newsom recently signed Executive Order N-22-19, which by its terms extended the terms of prior Executive orders B-59-18 and N-12-19. (Governor's Exec. Order No. N-22-19 (Dec. 23, 2019).) The Order "activates" and extends the price-gouging protections of Penal Code section 396. (*Ibid.*) Penal Code section 396 is designed to prevent merchants from taking unfair advantage of consumers by greatly increasing prices for essential consumer goods and services during an emergency. (Pen. Code, § 396, subd. (a).)

These essential consumer goods and services include housing services. (Pen. Code, § 396, subd. (b).) "Housing" means "any rental housing with an initial lease term of no longer than one year." (Pen. Code, § 396, subd. (j)(10).) Under the Penal Code's price-gouging protections, upon the proclamation of a state of emergency, rents cannot be increased more than 10 percent for any housing in California. (Pen. Code, § 396, subs. (a), (b).) Executive Order N-22-19 also eliminates the time limitations set forth in Penal Code section 396, subdivisions (b), (c), (e) and (f) (30-day and 180-day limitations) and extends Section 396's price-gouging protections until December 31, 2020. Moreover, under the Executive Order, during 2020 landlords will in most cases not be able to raise rents to subsequent tenants after evicting another tenant. (Pen. Code, § 396, subs. (f), (j)(11).) Violation of Section



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396 is a misdemeanor punishable by imprisonment, by a fine of not more than ten thousand dollars (\$10,000), or both. (Pen. Code, § 396, subd. (h).) The anti-price-gouging law may also be enforced civilly under Business & Professions Code section 17200, or “under all other laws of this state.” (Pen. Code, § 396, subd. (i).)

This means, effectively, in Butte, Los Angeles, Mendocino, Napa, Santa Barbara, Sonoma, and Ventura counties, through December 31, 2020, the state has imposed a sort of strict rent control not seen in the State of California since the 1995 passage of the Costa-Hawkins Rental Housing Act, which established what is known as “vacancy decontrol.” (Civ. Code, § 1954.53, subd.(a); *Action Apt. Ass’n, Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1237.)

Costa-Hawkins effectively took away municipal powers to control rents after a tenant vacated, allowing the landlord to raise the rent to market notwithstanding a local ordinance to the contrary. (*Action Apt. Ass’n, Inc., supra*, 41 Cal.4th at pp. 1237-1238.) At least during 2020 in the specified counties, including in Los Angeles County, because of Executive Order N-22-19, landlords will not have the right to raise rents on any housing unit rented to a new tenant after a vacancy. This will be true even if the tenant prior to the new tenant was evicted for, for example, non-payment of rent in a rent-stabilized apartment. While this is almost certainly not the intended outcome of Executive Order N-22-19, in 2020, if a hypothetical landlord evicts a hypothetical Santa Monica tenant paying the far-below-market rent of \$1,000 for a two-bedroom apartment, that hypothetical landlord will not be able to charge more than \$1,100 to the next tenant of that two-bedroom apartment.

Discrimination against tenants with subsidized housing

Discrimination against tenants with Section 8 and other housing vouchers

is now outlawed statewide under FEHA. With the passage of Senate Bill 329 in October 2019, California amended the Fair Employment and Housing Act (“FEHA”) to prohibit landlords from discriminating against prospective tenants on the ground that the tenants participate in the Housing Choice Voucher program, popularly known as “Section 8,” or other government housing assistance programs, such as the Veterans Assistance Housing program for homeless veterans. (Sen. Judiciary Com., Rep. on Sen. Bill No. 329 (2019-2020 Reg. Sess.) April 29, 2019, p. 1.) While FEHA already nominally prohibited source-of-income discrimination, housing vouchers were not considered a “source of income” under FEHA prior to the passage of Senate Bill 329. (*Ibid.*; *Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 933-936 [“To some, sound social policy may call for an inclusion of Section 8 assistance payments in the tenant’s source of income, but so far the Legislature does not think so.”])

The Legislature thinks so now. It has amended Government Code sections 12927, subd. (i) and 12955, subd. (p)(1) by changing the definition of “source of income” to include all types of housing assistance vouchers and subsidies paid by the government. In passing Senate Bill 329, the Legislature acknowledged that several local governments, including San Diego and Santa Monica, had already passed local ordinances prohibiting discrimination against housing voucher holders, and that these local ordinances had been modestly successful in combatting voucher-based discrimination against the “vulnerable population” of voucher holders who are “at higher risk to become homeless due to their socioeconomic status.” (Sen. Judiciary Com., Rep. on Sen. Bill No. 329 (2019-2020 Reg. Sess.) April 29, 2019, pp. 7, 11.) This overdue fix to FEHA seeks to replicate the successes of local governments and house more voucher-holders faster across California.

Temporary housing for soon-to-be homeless

On September 26, 2019, Governor Newsom signed Assembly Bill 1188, which is codified at Civil Code section 1942.8. The law seeks to assist those at risk of homelessness by encouraging landlords and tenants to permit those persons to temporarily reside in a tenant’s home. (Civ. Code, § 1942.8, subd. (a).) “At risk of homelessness” means an individual or family with an annual income below 30 percent of median family income for the area, in danger of having to move into an emergency shelter, and meets other criteria generally associated with housing instability. (24 C.F.R. § 578.3 (2016).) The tenant needs the written approval of his landlord to enter into this temporary arrangement, and the landlord may adjust the rent during the time of temporary occupancy to an amount agreed to by both the landlord and tenant. (Civ. Code, § 1942.8, subds. (b) and (c).) The temporary resident’s right to occupy may be terminated on a previously agreed date, on seven days’ notice, on 24 hours’ notice, or immediately without notice, depending on the circumstances. (Civ. Code, § 1942.8, subd. (g).) Upon expiration of the termination notice, the temporary resident may be removed by the police. (*Ibid.*) Because Civil Code section 1942.8 requires multiple contracts to be executed (Civ. Code, § 1942.8, subd. (f)) and does not “compel a landlord or property owner to agree to permit the occupancy of the person at risk of homelessness” (Civ. Code, § 1942.8, subd. (i)), it is doubtful that this Code section will be of much help in alleviating homelessness overall.

Wealth is driving poverty

In summary, the significant new housing laws of 2020 represent governments’ responses to aching need. As radical as it is to suddenly have dozens of new housing laws, the number of laws is not nearly as radical as the conditions on the street, the result of rapidly escalating real estate prices.



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Steve Lopez, writing for the Los Angeles Times, observed, “California’s wealth, in a way, is driving its poverty.” (Lopez, *Homelessness in L.A. is a catastrophe in motion, and our leaders are largely to blame*, L.A. Times (Jun. 4, 2019).) He was right – the economic data backs him up. But he was right by accident, because he also wrote “The news of a robust,

booming economy is a fabrication.” The robust, booming economy for owners of real estate is real. But that particular booming economy has left non-property-owners in the streets. Literally.



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