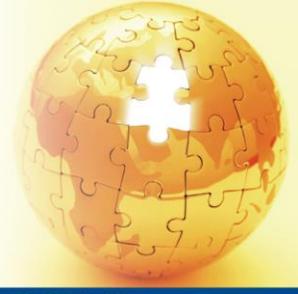




ISSUE Insights



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Rent Control A General Overview of California's Costa-Hawkins Rental Housing Act

In 1995, the California Legislature passed and the Governor signed AB 1164 – a law that is known as the Costa-Hawkins Rental Housing Act. This law cleared the way for owners in rent control communities to establish initial rental rates when there was a change in occupancy at a dwelling unit – a policy known as vacancy decontrol.

While cities and counties continue to maintain the ability to implement local rent control laws, they must follow the parameters established in the Costa-Hawkins Rental Housing Act. At the heart of Costa-Hawkins are a number of basic rules: (1) housing constructed after 1995 must be exempt from local rent controls, (2) new housing that was already exempt from a local rent control law in place before February 1, 1995, must remain exempt, (3) single family homes and other units like condominiums that are separate from the title to any other dwelling units must be exempt from local rent controls, and (4) rental property owners must have the ability to establish their own rental rates when dwelling units change tenancy. The intent of this law was to provide a “moderate” approach to the otherwise “extreme” vacancy control ordinances that were in place during the 1980’s in Berkeley, Santa Monica, Cotati, East Palo Alto, and West Hollywood.

To protect a tenant from an owner’s arbitrary eviction, the state law includes provisions that govern the change in terms of tenancy and thereby the owner’s ability or inability to raise the rent. The outline below is intended to provide a general overview of the provisions of the Costa-Hawkins Rental Housing Act. For specific language, see the California Civil Code, beginning at Section 1954.50.

Section I – Units Exempt from Rent Controls – Civil Code 1954.52

No law can interfere with an owner’s ability to establish the rental rate for his/her property when:

1. New Construction – The property has a certificate of occupancy issued after February 1, 1995 (Civil Code 1954.52(a)(1));
2. Previously Exempt – The property was already exempt from a local residential rent control ordinance on or before February 1, 1995, pursuant to a local exemption for newly constructed units. (Civil Code 1954.52(a)(2); and
3. Single Family Homes & Condominiums – The property is a single family home or is separate from the title of any other dwelling unit, such as condominium units. (Several exceptions do apply in this case¹.) (Civil Code Section 1954.52(a)(3)(A)).



Section II. Exceptions to Vacancy Decontrol - Civil Code Section 1954.53

An owner can establish the initial rental rate for a dwelling or unit, except in the following conditions:

1. Owner Terminates the Tenancy with a 30-Day or 60-Day Notice - The previous tenancy was terminated by the owner with a 30-day or 60-day notice to terminate the tenancy (pursuant to Civil Code Section 1946) or has been terminated upon a change in the terms of the tenancy (noticed pursuant to Civil Code Section 827), except a change permitted by law in the amount of rent or fees (Civil Code Section 1954.53(a)(1)).
2. Owner Fails to Renew Government Contract - The owner terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant (Civil Code Section 1954.53(a)(1)).
 - A. 3-Year Rent Freeze - An owner cannot set an initial rent for 3 years following the date of the termination or nonrenewal of the contract or agreement. For any new tenancy established during the three-year period, the rental rate for a new tenancy established in that vacated dwelling or unit must be at the same rate as the rent under the terminated or nonrenewed contract or recorded agreement with a governmental agency that provided for a rent limitation to a qualified tenant, plus any increases authorized after the termination or cancellation of the contract or recorded agreement (Civil Code Section 1954.53(a)(1)(A)).
 - B. Exemption for 12-Month Contracts - These provisions do not apply to any new tenancy of 12 months or more duration established after January 1, 2000, pursuant to the owner's contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant unless the prior vacancy in that dwelling or unit was pursuant to a nonrenewed or canceled contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant (Civil Code Section 1954.53(a)(1)(B)).
3. Government Contracts - The owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code (Civil Code Section 1954.52(b) and Civil Code Section 1954.53(a)(2)).
4. Substandard Housing - The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the Health and Safety Code, excluding any violation caused by a disaster; if the citation was issued at least 60 days prior to the date of the vacancy; and the cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation (Civil Code Section 1954.53(f)).

Section III. The Phase In – Civil Code Section 1954.52(a)(3)(C)

A phase-in program was established for single-family homes and condominiums that are alienable separate from the title to any other dwelling unit. It works like this:

Where the dwelling or unit in which the initial or subsequent rental rates are controlled by an ordinance or charter provisions in effect on January 1, 1995, the following applies:



1. An owner of the property may establish the initial and all subsequent rental rates for all existing and new tenancies in effect on or after January 1, 1999, if the tenancy in effect on or after January 1, 1999, was created between January 1, 1996, and December 31, 1998.
2. Commencing on January 1, 1999, an owner of the property can establish the initial and all subsequent rental rates for all new tenancies if the previous tenancy was in effect on December 31, 1995.
3. The initial rental rate for a dwelling or unit in which the initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, may not, until January 1, 1999, exceed the amounts allowed by this law². An owner of the property may, until January 1, 1999, establish the initial rental rate for a dwelling or unit only where the tenant has voluntarily vacated, abandoned, or been evicted for failure to pay rent pursuant to paragraph (2) of Section 1161 of the Code of Civil Procedure.

Section IV. Other Provisions

1. Ability of Local Community to Enforce Eviction Rules – The statute affirms a public entity's authority to monitor the basis for eviction (Civil Code Section 1954.52(c) and 1954.53(e)).
2. Sublease Provisions – The following sublease provisions are included in the law:
 - A. This law does not preclude the express establishment in a lease or rental agreement of the rental rates to be charged in the event the rental unit is sublet, and nothing in this law shall be construed to impair the obligations of contracts entered into prior to January 1, 1996. (Civil Code Section 1954.53(d)(1)).
 - B. Where the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this statute to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996. (Civil Code Section 1954.53(d)(2)).
 - C. This section does not enlarge or diminish an owner's right to withhold consent to a sublease or assignment (Civil Code Section 1954.53(d)(3)).
 - D. Acceptance of rent by the owner does not operate as a waiver or otherwise prevent enforcement of a covenant that prohibits a sublease or assignment unless the owner has received written notice from the tenant that is a party to the agreement and thereafter accepts rent. (Civil Code Section 1954.53(d)(4)).
 - E. The owner waives his/her rights to establish the initial rental rate if he/she has received written notice from the tenant that is a party to the agreement and the owner thereafter accepts rent (Civil Code Section 1954.53(d)(4)).
3. Contractual Relationships - This statute shall not be interpreted to impair the obligations of contracts entered into prior to January 1, 1996 (Civil Code Section 1954.53(d)(1)).
4. Partial Changes in Occupancy – An owner cannot establish a new rent when there is a partial change in occupancy by one or more of the occupants of the premises, and one of the occupants remains in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee, who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit (Civil Code Section 1954.53(d)(3)).



5. Protection of Tenants Upon Renewal of Lease – The owner cannot establish a new rent when there is a renewal of the initial hiring by the same tenant, lessee, authorized subtenant, or authorized sublessee. (Civil Code Section 1954.53 (b)).
6. 90-Days' Notice When Owner Terminates a Government Contract - When an owner terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for rent limitations to a qualified tenant, the tenant or tenants who were the beneficiaries of the contract shall be given at least 90 days' written notice of the effective date of the termination and shall not be obligated to pay more than their portion of the rent, as calculated under the contract or recorded agreement, for 90 days following receipt of the termination notice (Civil Code Section 1954.535).

Section v. Definitions

The following definitions apply to this law:

"Comparable units" means rental units that have approximately the same living space, have the same number of bedrooms, are located in the same or similar neighborhoods, and feature the same, similar, or equal amenities and housing services.

"Owner" includes any person, acting as principal or through an agent, having the right to offer residential real property for rent, and includes a predecessor in interest to the owner, except that this term does not include the owner or operator of a mobilehome park, or the owner of a mobilehome or his or her agent.

"Prevailing market rent" means the rental rate that would be authorized pursuant to 42 U.S.C.A. 1437 (f), as calculated by the United States Department of Housing and Urban Development pursuant to Part 888 of Title 24 of the Code of Federal Regulations.

"Public entity" has the same meaning as set forth in Section 811.2 of the Government Code.

"Residential real property" includes any dwelling or unit that is intended for human habitation.

"Tenancy" includes the lawful occupation of property and includes a lease or sublease.



Endnotes

¹ This exception does not apply in the following cases:

(i) A dwelling or unit where the preceding tenancy has been terminated by the owner with a 30-day or 60-day notice to terminate the tenancy (pursuant to Civil Code Section 1946) or has been terminated upon a change in the terms of the tenancy, noticed pursuant to Civil Code Section 827. (Civil Code Section 1954.52 (a)(3)(B)(i)).

(ii) A condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value. The initial rent amount of such a unit for purposes of this law is the lawful rent in effect on May 7, 2001, unless the rental amount is governed by a different provision of this chapter. However, if a condominium dwelling or unit has (1) a certificate of occupancy issued after February 1, 1995, or (2) it has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units, or (3) if all the dwellings or units except one have been sold separately by the subdivider to a bona fide purchaser for value, and the subdivider has occupied that remaining unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred, then the unsold unit is exempt from rent control. (Civil Code Section 1954.52 (a)(3)(B)(ii)).

² The rental rate of a dwelling or unit whose initial rental rate is controlled by ordinance or charter provision in effect on January 1, 1995, shall, until January 1, 1999, be established in accordance with this subdivision. Where the previous tenant has voluntarily vacated, abandoned, or been evicted for failure to pay rent pursuant to paragraph (2) of Section 1161 of Code of Civil Procedure, an owner of residential real property may, no more than twice, establish the initial rental rate for a dwelling or unit in an amount that is no greater than 15 percent more than the rental rate in effect for the immediately preceding tenancy or in an amount that is 70 percent of the prevailing market rent for comparable units, whichever amount is greater. The initial rental rate established pursuant to this subdivision may not be deemed to substitute for or replace increases in rental rates otherwise authorized pursuant to law. (Civil Code Section 1954.53(c)).

