

FAQs

(frequently asked questions)

California Statewide Rent and Eviction Law

This article is provided as a resource for understanding the changes which are taking place in San Francisco's real estate community, and summarizes those changes as they are understood on the publication date. Updated versions of this article may appear on the firm's website at www.g3mb.com.

AB 3088 became law on August 31, 2020, extending the Notice to Pay Rent period from 3 days to 15. Under this new law, a tenant who provides a COVID-19 declaration of hardship within the 15-day period may not be evicted for unpaid rent accrued between March 1 and August 31, 2020. The tenant may not be evicted for rent unpaid from September 1 to January 31, 2021, if the tenant pays at least 25% of missed rent payments by January 31, 2021. (more within)

Tenant Protection Act of 2019 became effective on January 1, 2020, enacting enacted a sweeping statewide law creating rent and eviction controls affecting most residential real properties in California. As a result of this law, almost all residential real properties in California will now be subject to a degree of rent control, and will be subject to "just cause" eviction rules, meaning landlords will no longer be able to evict a tenant simply because a fixed term lease has expired. The law will not apply to new housing built within the past 15 years, and a limited number of other types of properties are exempt (see within). The law does **not** supersede more stringent rent and eviction controls that exist in certain cities and counties, like San Francisco; however, it **does** affect residential properties in those jurisdictions that were previously exempt from local rent and eviction control laws.

Single-Family Home Exemption at Risk. A recent appellate court decision (*Owens v. City of Oakland*) held that a single-family home with bedrooms rented to separate tenants can lose its Costa Hawkins Act exemption from local rent control laws. While the new statewide Tenant Protection Act expressly exempts individually owned single-family homes and condominiums, the *Owens* decision opens the door to drawing such homes under the Tenant Protection Act's rules. The Tenant Protection Act has yet to receive court interpretation, and it possesses a unique statutory construction which might prevent the application of the *Owens* decision statewide.

Meanwhile, owners of single-family homes and condos who rent out rooms or who have roommates will want to give greater attention to their rental agreements, to avoid being swept under local or state rent control rules.

What are "Rent Control" & "Eviction Control" Ordinances?

"Rent Control" ordinances are laws which limit the amount by which rents may be increased. All state and local Rent Control ordinances allow for unlimited rent increases for most vacant units (see, "Vacancy Control" below).

"Eviction Control" ordinances are laws which specify "just causes" – bona fide conditions which must exist before a tenant may be evicted. Just causes may be **at-fault** (example – a tenant failing to pay rent) or **no-fault** (example – an owner who wants to move into the tenant's unit).

It is not unusual to find both Rent and Eviction Controls combined in a single local ordinance; such is the case in San Francisco.

What Constitutes a “Residential Real Property”?

The Tenant Protection Act of 2019 broadly applies to “any dwelling or unit that is intended for human habitation.” It will affect many local Rent Control and Eviction Control ordinances already in place, or enacted by municipalities in the future.

Who is an “Owner”?

The Tenant Protection Act applies to current and former owners and their agents who have the legal right to offer a residential real property for rent.

Which Occupants are Covered?

The new law applies to tenants *and subtenants* who lawfully occupy the residential real property.

Does the Tenant Protection Act Supersede Existing Local Eviction Control Ordinances?

It depends:

- If the residential real property is subject to a local just cause Eviction Control ordinance adopted *on or before* September 1, 2019, the Tenant Protection Act of 2019 will *not* apply, and only the local ordinance will control.
- If the property is subject to a local just cause Eviction Control ordinance adopted or amended *after* September 1, 2019, but which is *more protective* than the Tenant Protection Act, again, the local ordinance will control.
- But, if a local just cause Eviction Control ordinance adopted after September 1, 2019, offers less protection than the Tenant Protection Act, the Act controls, and the local ordinance can’t be enforced until the Tenant Protection Act of 2019 is repealed.

A local just cause Eviction Control ordinance is considered “*more protective*” than the Tenant Protection Act if it meets the following criteria:

- (i) The just causes for eviction under the local ordinance are consistent with those under the Tenant Protection Act;
- (ii) The local ordinance further limits the reasons for eviction, provides for higher relocation assistance amounts, or provides additional tenant protections that are not prohibited by any other provision of law; and
- (iii) The local government takes steps to declare that its local ordinance is more protective than the provisions of Tenant Protection Act of 2019.

Does the Tenant Protection Act Supersede Existing Local Rent Control Ordinances?

Again, it depends:

- Rental housing subject to a local rent control ordinance which restricts annual rent increases to an amount *less than* the cap provided in the Tenant Protection Act of 2019 will remain subject to the local ordinance.
- Local Rent Control ordinances which allow rent increases *above* the cap provided in the Tenant Protection Act of 2019 are *superseded* by the Act.

How Does AB 3088 Interface with the Tenant Protection Act & Local Ordinances?

AB 3088 is COVID-19 pandemic legislation which “sits on top” of all other state and local laws. Under AB 3088, 3-Day Notices to Pay or Quit for residential tenancies where the *tenant is a natural person* are extended to 15-day Notices. A tenant who provides a Declaration of Hardship within the 15-day period may not be evicted for unpaid rent accrued between March 1 and August 31, 2021. For unpaid rent accrued between September 1, 2020, to January 31, 2021, a tenant who signs a Declaration of Hardship may not be evicted for

nonpayment if the tenant pays at least 25% of missed rent payments by January 31, 2021. The tenant still remains contractually responsible for any unpaid rent, but a landlord cannot use eviction as a means to recover that rent, nor bring a civil suit against the tenant before March 1, 2021; Small Claims Court will adjudicate these suits, regardless of the amount owed. Landlords whose tenants have missed rent between March 1 and September 1, 2020 must provide a specific statutory notice to tenants informing them of their rights under AB 3088 no later than September 30, 2020.

What if My Rental Unit is subject to Local Rent & Eviction Controls Jurisdiction (like in San Francisco), but is Exempt from Local Controls (e.g., as New Construction).

In such instances, the Tenant Protection Act of 2019 will regulate both rents and evictions at the residential real property, even though the property is exempt from controls under local ordinances. Remember, however, that the Act does *not* regulate housing built within the last 15 years.

Under the Tenant Protection Act, can I Evict a Tenant after the Lease Term Ends?

Where a tenant has not continuously and lawfully occupied the residential real property for at least **12 months** (e.g. a 6-month fixed-term tenancy or a month-to-month tenancy of less than 12 months), an owner can still evict *without just cause*.

If any additional adult tenants were added to the lease *before an existing tenant has continuously and lawfully occupied the residential real property for 24 months*, an owner can evict without just cause if:

- 1) All of the tenants have *not* continuously and lawfully occupied the residential real property for 12 months or more; or
- 2) One or more tenants have *not* continuously and lawfully occupied the residential real property for 24 months or more.

In all other instances, subject to the exemptions from the law noted below, an owner can only evict under an *at-fault* just cause or a *no-fault* just cause.

However, as noted above, the Tenant Protection Act does not over-ride more restrictive local Eviction Control ordinances.

What Constitutes an At-Fault “Just Cause” to Evict?

The Tenant Protection Act of 2019 currently provides 11 *at-fault* just causes for eviction (which may differ from those in local Eviction Control Ordinances):

- 1) Default in the payment of rent.
- 2) A breach of a material term of the lease, including, but not limited to, violation of a provision of the lease after being issued a written notice to correct the violation.
- 3) Maintaining, committing, or permitting the maintenance or commission of a nuisance.
- 4) Committing waste.
- 5) Refusing to sign a written extension or renewal of a lease for an additional term of similar duration with similar provisions after a written request from the owner, provided that extension terms do not violate the Tenant Protection Act of 2019.
- 6) Criminal activity by the tenant on the residential real property, including any common areas, or any criminal activity or criminal threat, on or off the

residential real property, that is directed at any owner or agent of the owner of the residential real property.

- 7) Assigning or subletting the premises in violation of the lease.
- 8) Refusal to allow the owner to enter the residential real property as authorized by law.
- 9) Using the premises for an unlawful purpose.
- 10) An employee's, agent's, or licensee's failure to vacate after termination of employment, agency, or license.
- 11) Failure to vacate after giving written notice of the tenant's intention to terminate the tenancy, or making a written offer to surrender that is accepted in writing by the owner, and then failing to vacate by the specified date.

If My Tenant Breaches the Lease, Can I Evict Immediately?

The Tenant Protection Act of 2019 provides that before an owner can issue a just-cause eviction notice for a **curable lease violation**, the owner must first give notice of the violation to the tenant **with an opportunity to cure the violation**. If the violation is not cured within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may thereafter be served to terminate the tenancy.

What Constitutes a No-Fault "Just Cause" under the Tenant Protection Act?

The Tenant Protection Act currently provides 4 **no-fault** just causes for eviction:

- (1) Intent to occupy the residential real property by the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents. **Note that on or after July 1, 2020, for an owner to be eligible to claim this just cause, the lease must contain a provision that allows termination on this basis.** The Act authorizes affected landlords to amend existing leases to add such a provision.
- (2) Withdrawal of the entire residential real property (not just one of several units) from the rental market (i.e. the Ellis Act).
- (3) The owner complying with any of the following:
 - (a) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property; or
 - (b) An order issued by a government agency or court to vacate the residential real property; or
 - (c) A local ordinance that necessitates vacating the residential real property.
- (4) Intent to demolish or to **substantially remodel** the residential real 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, or 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.

When does the Tenant Protection Act require Relocation Assistance Payments to Tenants?

Only tenants subject to a **no-fault** eviction are entitled to relocation assistance from the owner equal to one-month's rent, based on the rent being charged on the date the eviction notice is served. The owner has two options: 1) waive, in writing, collection of the last

month's rent, prior to the rent becoming due; or 2) pay the tenant one-month's rent within 15 days of service of the eviction notice. The eviction notice must advise the tenant of the right to relocation assistance and state which option the owner elects.

However, a tenant subject to eviction due to an **order issued by a government agency or court**, where the order further determines the tenant is **at fault** for the condition triggering the order, is **not** entitled to relocation assistance. Further, if a tenant **fails to vacate** in response to a no-fault eviction notice, the amount of any relocation assistance paid or last month's rent waived becomes recoverable in the owner's court action to recover possession.

Any relocation assistance or rent waiver paid under the Tenant Protection Act can be credited against any other relocation assistance required by any other laws.

An owner's failure to strictly comply with the Tenant Protection Act of 2019 renders the eviction notice void.

What If I Do Not Comply with The Tenant Protection Act?

What Residential Properties & Circumstances are Exempt from the Tenant Protection Act?

The following are **exempt** from the provisions of the Tenant Protection Act of 2019:

- (1) Transient and tourist **hotel** occupancy.
- (2) Housing accommodations in a **nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, or an adult residential facility**.
- (3) **Dormitories** owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.
- (4) Housing accommodations in which the tenant **shares bathroom or kitchen facilities with the owner who maintains their principal residence** at the residential real property.
- (5) **Single-family owner-occupied residences**, including a residence in which the owner-occupant rents or leases no more than two units or bedrooms (including an Accessory Dwelling Unit).
- (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.
- (7) **New housing** that has been issued a certificate of occupancy within the **previous 15 years**.
- (8) **Most single-family homes and condominiums**. The owner of such residences cannot be a real estate investment trust, a corporation, or an LLC where any member is a corporation. Further, beginning July 1, 2020, in order to qualify for this exemption, the tenants must be provided a notice of the exemption as set forth in the Tenant Protection Act.
- (9) 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**, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income.
- (10) Mobile homes and mobile home parks.

Do I Have to Notify My Tenants of this Law?

Yes. An owner subject to the eviction controls established by the Tenant Protection Act of 2019 must provide notice to the tenant as follows:

- (1) For any tenancy commenced or renewed on or after July 1, 2020, as an addendum to the lease or rental agreement, or as a written notice signed by the tenant, with a copy provided to the tenant.
- (2) For a 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.
- (3) The notification or lease provision shall be in no less than 12-point type and shall state verbatim the language contained in the Tenant Protection Act of 2019.

Under the Tenant Protection Act, can I Still Raise My Tenant's Rent?

The Tenant Protection Act caps rent increases to no more than 5% plus the increase in the Consumer Price Index, but no more than 10%, based on the gross rental rate for the rental unit over any 12-month period, including any rent discounts, incentives, concessions, or credits offered by the owner and accepted by the tenant, as long as they are identified in the lease or lease amendment. Owners are also limited to no more than 2 incremental rent increases against the same tenant in any 12-month period.

Does the Act Create Vacancy Control?

NO! Owners are still empowered to set the initial rental rate for a new tenancy as long as no tenant from the prior tenancy remains in lawful possession of the residential property.

Does the Act Limit Allowable Rents Charged by Master Tenants to Subtenants?

Yes. The Tenant Protection Act prohibits a master tenant from charging a subtenant a rent that exceeds the amount a landlord can charge the master tenant. Many local ordinances provide the same.

Does the Act Provide any Grace Period?

Although the Tenant Protection Act becomes effective January 1, 2020, it applies to rent increases occurring on or after **March 15, 2019**. In the event that an owner has increased the rent by more than the amount permissible under the law between March 15, 2019, and January 1, 2020, both of the following shall apply:

- (A) The rent on January 1, 2020, shall be the rent as of March 15, 2019, plus the maximum permissible increase allowed under the law; and,
- (B) An owner shall not be liable to the tenant for any corresponding rent overpayment.

Accordingly, there is a grace period that legalizes rent increases in excess of the limits set by the Act issued between **March 15, 2019 and December 31, 2019**, but **effective January 1, 2020**, the tenant's base rent going forward will be **reduced** to the maximum allowed under the Act.

What if I Increased my Tenant's Rent by Less than the Amount Allowed by the Tenant Protection Act between March 15, 2019, and January 1, 2020?

An owner who increased the rental rate on or after March 15, 2019, but prior to January 1, 2020, by an amount less than the rental rate increase permitted by the Tenant Protection Act may increase the rental rate twice within 12 months of March 15, 2019, but the increase cannot exceed the maximum rent increase permitted by the Act.

Can the Tenant Waive Rights Under the Tenant Protection Act?

NO. Any waiver of the rights under the Tenant Protection Act of 2019 is deemed void as contrary to public policy. Accordingly, a lease cannot "opt out" of the Act's provisions.

Does the Tenant Protection Act Contain a Sunset Provision?

Yes. The Act expires on January 1, 2030, unless repealed sooner or otherwise renewed by the state legislature.

How do I Choose a Lawyer to Assist Me in Landlord-Tenant Matters?

A Law Firm Specializing in Landlord/Tenant Issues Should Offer You:

- Experienced attorneys knowledgeable in all aspects of both the creation and termination of landlord/tenant relationships;
- Skills in drafting and reviewing leases;
- A thorough understanding of state and local Rent & Eviction Control laws.

What Sets Goldstein, Gellman, Melbostad, Harris & McSparran, LLP (“G3MH”) Apart in Landlord-Tenant Matters?

EXPERIENCE:

G3MH has been a respected member of San Francisco’s real estate community for over thirty-five years. During that time, we have provided guidance to and represented thousands of property owners in a wide range of real estate matters, including TIC creation, condominium conversion, leasing, and all other aspects of residential property ownership and management.

SOCIAL CONSCIENCE:

G3MH does not participate in evictions of elderly, disabled, or catastrophically ill tenants.

REASONABLE FEES:

G3MH provides services on an hourly basis. The hourly rate charged will be based upon the level of experience of the attorney you work with, which we will endeavor to match to the task at hand.

SERVICE:

G3MH is a full-service law firm, which means that our attorneys and paralegals are available to offer additional guidance in tenancy-in-common issues, condominium conversion, title transfer and vesting, trust and estate matters, easements, property tax issues, and all other real estate matters. No other firm in San Francisco offers the staffing and resources to meet your needs in every aspect of residential real estate management.

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