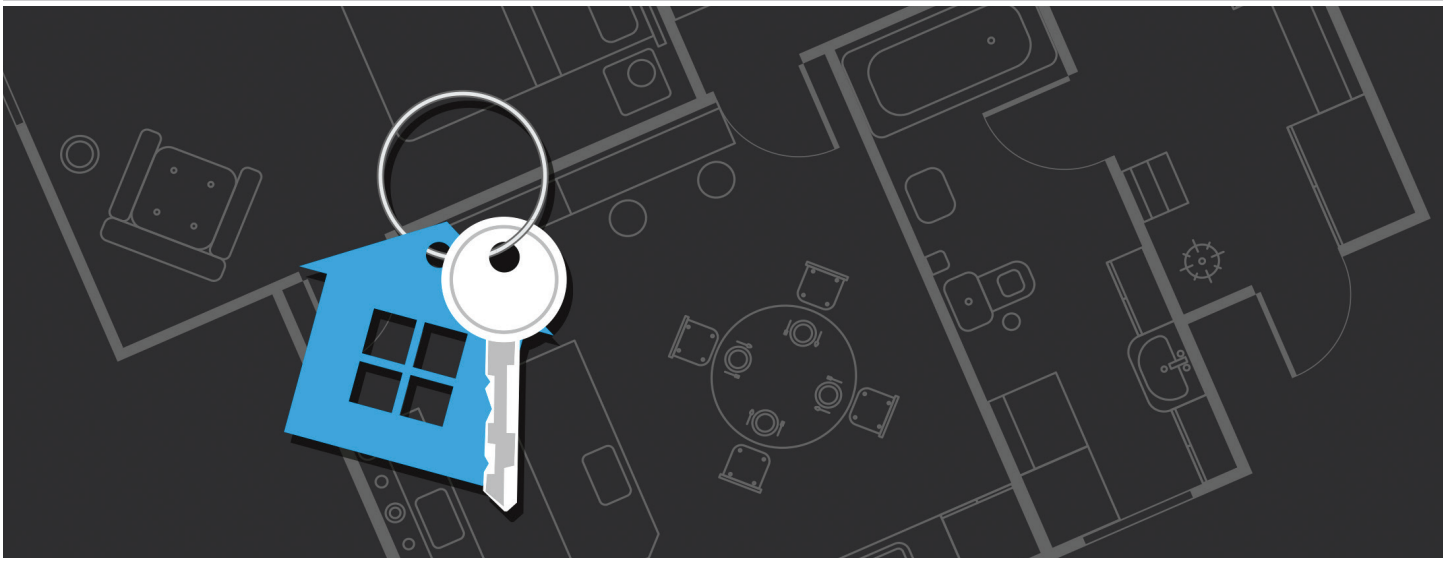
SheppardMullin



Tenant Protection Act (AB 1482) — Compliance Guide

By: Nancy Scull, Whitney Hodges, Kelsey Clayton and Marko Valentine

BACKGROUND

In the fourth quarter of 2019, California Governor Gavin Newsom signed into law a package of housing-related legislation that included 18 individual bills. Within this package, there were a significant number of important changes aimed at addressing the statewide housing crisis through a variety of measures, including, among others mechanisms, upzoning, approval streamlining and tenant protections.[1]

In the rental housing market, one of the more noteworthy bills from Governor Newsom's recent signing spree is Assembly Bill 1482 – The Tenant Protection Act of 2019 ("AB 1482").[2] AB 1482 creates a number of additional restrictions with which landlords must comply. Most importantly, it: (1) enacts a statewide rent increase cap; (2) greatly expands the number of tenants who can only be evicted strictly for "just cause;" and (3) heightens certain tenant noticing requirements. AB 1482, effective January 1, 2020, will expire January 1, 2030 unless extended.[3]

For a general discussion of AB 1482's rent increase cap and just cause eviction requirements see prior link here.

Below is a compliance guide for the major provisions of AB 1482, addressing: (1) applicable exemptions; (2) application of the rent increase cap and just cause provisions; (3) noticing requirements; and (4) other laws that could impact implementation of AB 1482.

It is important to note the current version of AB 1482 leaves a considerable number of terms undefined and several provisions remain vague. Consequentially, it is unclear exactly how AB 1482 will be implemented, and it will be important for property owners[4] and tenants alike to stay apprised of any regulatory changes or subsequent clarifications.

---

[1] See SB 329 and SB 330.

[2] AB 1482 is an act to add and repeal Sections 1946.2, 1947.12, and 1947.13 of the Civil Code, relating to tenancy.

[3] Litigation has recently been initiated which seeks an order to permanently enjoin and prohibit Governor Newsom from enforcing AB 1482. *Better Housing for Long Beach et al. v. City of Long Beach et al.* (U.S.D.C. – Central District, Case No. 2:19-CV-08861) alleges AB 1482 violates the following provisions of the United States Constitution: (1) the takings clause of the Fifth Amendment; (2) the seizure clause of the Fourth Amendment; and (3) the due process clause of the Fourteenth Amendment.

[4] The terms "property owner" and "landlord" shall be used interchangeably herein and shall mean the individual or entity responsible for the rental of a residential dwelling unit.

1. DETERMINE IF YOUR PROPERTY IS SUBJECT TO AB 1482

Statutory Exemptions

AB 1482 contains exemptions from the both rent increase cap and just cause eviction provisions, as are generally identified in the following chart.[5], [6]

AB 1482 Exemptions		
Exemption	**Rent Increase Cap Exemptions**	**Just Cause Eviction Exemptions**
Housing subject to a more restrictive local rent control ordinance	✓	✗
Housing subject to a more restrictive local just cause eviction ordinance	✗	✓
Housing issued a Certificate of Occupancy ("COOs") less than 15 years prior (as determined on a rolling basis[7]).	✓	✓
Dormitories	✓	✓
Owner-occupied duplex	✓	✓
Residential property that is alienable separate from title to any other dwelling unit (primarily, single-family residences and condominiums), provided that the property is not owned by a real estate investment trust, corporation, or limited liability company	✓	✓
Deed-restricted affordable housing for low- to moderate-income housing	✓	✓
Single-family, owner-occupied residences	✗	✓
Tourist hotel	✗	✓
Housing accommodations in a nonprofit hospital or religious facility	✗	✓
Housing accommodations in which the tenant shares a bathroom or kitchen with the owner who maintains principal residence at the property	✗	✓

[5] Please note that these exemptions are simplified for ease of reference. However, many are nuanced, and some are slightly different between the rent cap and just cause provisions. For example, the "dormitories" exemption for the rent increase cap provides for "[d]ormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution," whereas the just cause corollary states "[d]ormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school."

[6] To make the final determination as to whether a property is exempt from either or both of the rent increase cap and eviction requirements for reasons listed in the chart, reviewing the text of AB 1482 will be required.

[7] "Determination on a rolling basis" means that any units which were issued final COOs on, or prior to, January 1, 2005 will be subject to AB 1482 immediately. Units issued COOs after January 1, 2005 will become subject to the law 15 years after issuance of the COO. For example, units issued COOs on July 15, 2012 will be subject to AB 1482 on July 15, 2027. Units issued COOs after January 1, 2015 will not be subject to AB 1482, unless it is extended beyond January 1, 2030. The conservative approach, recommended by the National Apartment Association ("NAA") is to include an addendum in all current and future leases which specify to the day when the final COO was issued and when the property will be subject to AB 1482.

Local Ordinances

AB 1482 creates a minimum level of "rent control" for all non-exempt units and, in municipalities with stricter rent control ordinances, local rules will preempt AB 1482 and continue to apply. This determination will be made on a year-by-year basis. Thus, in municipalities with fluctuating rent increase caps, this could mean that properties are subject to AB 1482 one year and a local ordinance in subsequent years – or vice versa.

For example, in the City of Santa Monica, as of the date of publication, the local rent control rules are more stringent than AB 1482, but only apply to units built prior to 1979. Therefore, for units built in Santa Monica prior to 1979, the local rules will continue to apply. However, for all other units exempted under Santa Monica's local rules, AB 1482 will apply.

Similarly, where a municipality has a just cause eviction ordinance in place, landlords in that jurisdiction will be subject to local regulation if either: (1) it was enacted prior to September 1, 2019; or (2) it was enacted after September 1, 2019 but is "more protective" than AB 1482. If the local ordinance fails both of these prongs, landlords will be subject to AB 1482's just cause provisions even if they are exempt from AB 1482's rent increase cap.

In determining whether a just cause ordinance is more protective than AB 1482, the local regulation must: (1) be consistent with AB 1482; (2) provide higher relocation assistance or additional protections to tenants; and (3) the local government must have made a binding finding that the ordinance is "more protective."

2. RENT INCREASE CAP

Under AB 1482, a landlord may set the initial rental rate at any amount (unless restricted by other regulations), and may reset the rental amount upon vacancy of the unit. Unlike in the context of the just cause provisions (detailed below), the rent increase cap provisions begin to apply immediately upon occupancy and are not impacted by the addition of a new tenant. Once a unit is occupied, a landlord may only raise the rent a maximum of two times per year, and the total yearly increase cannot exceed 5% of the lowest gross rental rate, plus the change in the cost of living.[8] In any case, the total increase cannot exceed 10%.

In determining the lowest gross rental rate, any discounts, incentives, concessions, or credits offered by the owner and accepted by the tenant shall be excluded. At this time, it remains unclear what payments can be included in the calculation of "gross rental rate." Based on several guidance documents available at the time of publication, this total likely may include additional recurring charges, such as parking fees or pet "rent," so long as these items are separately identified and listed in the lease.

Despite the January 1, 2020 effective date, the rent increase cap provisions of AB 1482 will be applied retroactively to the rental amount operative as of March 15, 2019. In the event a property owner increased the rental amount by more than AB 1482's permissible cap between March 15, 2019 and January 1, 2020, the applicable rent on January 1, 2020 must be reduced to the rental amount as of March 15, 2019, plus the allowable increase under AB 1482. Notwithstanding the foregoing, landlords who have already raised rent in excess of 5% plus local CPI compared to the March 15, 2019 rent are not required to make any reparations to tenants to compensate for the amount paid over the allowable rent. In this instance, the landlord is only responsible for reducing the rent charged to the amount allowed under AB 1482, starting on January 1, 2020.

The California Apartment Association ("CAA") conservatively recommends that notice be provided to tenants whose rent will be reduced to March 15, 2019 plus AB 1482 allowable increase rates at least 30 days prior to the AB 1482 effective date. Conversely, the NAA has taken the position that providing notice any time prior to January 1, 2020 is acceptable because the change will be a decrease in rent rather than an increase.

[8] To determine the change in the cost of living, landlords should use the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index ("CPI"), for the region in which the unit is located, as published by the US Bureau of Labor Statistics, should be used.

3. RESTRICTIONS ON EVICTIONS

AB 1482 prohibits a landlord from evicting tenants absent "just cause." After a tenant has continuously and lawfully occupied a residential unit for 12 months – including time prior to AB 1482's effective date[9] – tenancy cannot be terminated without "just cause," which must be provided to the tenant via written notice. However, when a new, additional tenant occupies the unit, this clock is reset, and the just cause eviction provisions do not apply to the tenancy until either: (1) all tenants have lived in the unit for 12 months; or (2) any one tenant has lived in the unit for 24 months.

Just cause is separated into two categories: (1) "at fault" just cause; and (2) "no-fault" just cause, and the provisions apply equally to both month-to-month tenancies and fixed-term leases.

"At Fault" Just Cause

"At fault" just cause includes, but is not limited to:

(i) Failure to pay rent;
(ii) Material breach of the lease;
(iii) Committing waste;
(iv) Committing a nuisance;
(v) Criminal activity on the property,[10] or criminal threats against the landlord;
(vi) Improper assignment or subletting;
(vii) Refusing to allow landlord to enter the property as authorized by law;
(viii) Refusal to renew the lease under similar terms; and
(ix) Failure to vacate.

As discussed further below, even tenants who are "at fault" must be given a notice of the violation and a time period in which to cure, if such cure is possible.

In the case of a fixed-term lease set to expire, "at fault" just cause includes a tenant's refusal to execute a lease renewal for an additional term that is similar in duration and conditions to the existing lease. Therefore, if a tenant's 12-month lease is expiring, a landlord is not required to offer a month-to-month tenancy option to the tenant (unless required by a local ordinance).

"No Fault" Just Cause

"No fault" just cause includes an eviction resulting from the landlord's:

(i) Compliance with a government order or a local ordinance that requires vacation of the unit;
(ii) Removal of the rental unit from the marketplace;
(iii) Intent to demolish or substantially remodel[11] the unit; or
(iv) Intent to occupy the residential property or for specified family members of the landlord to occupy the property (only if the tenant agrees to such termination or if the lease allows for unilateral termination).

[9] For example, if a tenant moved in on December 31, 2018, the just cause protections apply immediately as of January 1, 2020. Alternatively, if a tenant moved in on July 1, 2019, the just cause provisions will be triggered on July 1, 2020.

[10] See previous post regarding a landlord's ability to cite just cause for evictions related to otherwise legal cannabis use, possession and/or cultivation.

[11] "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.

A "no fault" just cause eviction requires the landlord to provide the displaced tenant(s) with either a rent-waiver for the final month of tenancy or relocation assistance. The amount of relocation assistance or rent waiver would be equal to 1 month of the tenant's rent that was in effect when the owner issued the notice to terminate the tenancy.

4. NOTICE REQUIREMENTS

AB 1482 requires landlords to comply with specific notice requirements when: (1) the unit is subject to AB 1482; (2) the unit is exempt from AB 1482 because it is "alienable separate from title;" and (3) when evicting a tenant. The bills suggest that this notice is provided, and all leases be revised, by January 1, 2020 – a conservative approach advocated by NAA.[12] However, in reality, there is likely more time to make these changes, as discussed below.

The Dwelling is Subject to AB 1482

A property owner of residential real property subject to AB 1482 must provide the following notice, in no less than 12-point type:

> "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."

For any tenancy commenced or renewed on or after July 1, 2020, the notice must be provided as an addendum to the lease, or as a written notice signed by the tenant, with a copy provided to the tenant. For a tenancy existing prior to July 1, 2020, a written notice, or addendum to the lease must be provided to the tenant no later than August 1, 2020.

The Dwelling Falls Within The "Separately Alienable" Exemption

If a unit is exempt from AB 1482 because the unit is "alienable separate from title to any other dwelling unit," as described above (single-family residences and condominiums), landlords are still responsible for providing specific notice to their tenants. The tenants must be provided written notice that the unit is exempt from AB 1482 using the following statement:

> "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 (c)(5) and 1946.2 (e)(7) 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."

For a tenancy existing before July 1, 2020, the required notice may, but is not required to, be provided in the rental agreement. For a tenancy commenced or renewed on or after July 1, 2020, the required notice must be provided in the rental agreement. The language of this section is somewhat ambiguous, and it is unclear what method of notice would be acceptable (beyond inclusion in the rental agreement) or required for a tenancy existing prior to July 1, 2020. However, failure to provide compliant notice would prohibit a landlord from taking advantage of this exemption, therefore it is recommended to provide such notice as soon as practicable.

[12] To this end, NAA recommends placing a notice in any lease, even if such notice would not be required under AB 1482, in order to avoid confusion.

Notice Requirements During an Eviction

As described above, after a tenant has continuously and lawfully occupied a residential unit for 12 months, the landlord cannot terminate the tenancy without "just cause," which must be included in a written notice to the tenant in order to terminate the tenancy.

Eviction for "Just Cause" that is a Curable Lease Violation

Before a landlord issues a notice to terminate a tenancy for just cause that is a curable lease violation, the landlord must first give notice of the violation to the tenant with an opportunity to cure the violation pursuant to paragraph (3) of Code of Civil Procedure section 1161. 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.

Eviction for "No Fault" Just Cause

If a landlord issues a notice to terminate a tenancy for no-fault just cause, the landlord must provide notice to the tenant regarding tenant's right to relocation assistance or rent waiver. In either case, the amount due to the tenant will be equal to one months' rent. If the landlord elects to waive the rent for the final month of the tenancy, the notice must state the amount of rent waived and that no rent is due for the final month of the tenancy. Any relocation assistance must be provided within 15 calendar days of service of the notice.

5. ADDITIONAL LAWS THAT COULD AFFECT COMPLIANCE WITH AB 1482

Throughout 2019, a large number of housing-related bills were passed, most of which were signed into law in the fourth quarter. Several bills seek to legislate related topics, and to the extent these bills overlap, the most restrictive law generally controls. As such, it is important to be cognizant of all of the related housing bills. Please see below for a brief summary of some of the most relevant pieces of legislation for the rental housing market that could impact compliance with AB 1482.

AB 1110 – Rent Increases – Noticing: AB 1110 requires landlords of residential units with month-to-month tenancies to provide 90 days' notice for any rent increases that exceed more than 10% the amount of the rent charged annually (up from an existing 60 days' notice period). While AB 1110 is written to apply to all residential properties, in practicality, this law will apply only to properties exempt from AB 1482's rent increase cap due to the bill's limited application to periodic tenancies of one-month or less.

Penal Code Section 396 – Anti-Price Gouging Law: Penal Code section 396 applies to all residential properties, and prohibits landlords from raising the rent on a unit (including unoccupied units) by more than 10% during a state of emergency over the entire duration of the state of emergency. To the extent the rent increase limits imposed by AB 1482 are more restrictive, the AB 1482 rent increase cap would apply. Because of AB 1482's annual limits, Penal Code section 396 will likely become more pertinent for lengthy states of emergency. For instance, if a state of emergency lasted 3 years, a landlord could only increase rent a total of 10% over the entire period, as opposed to the annual 5% plus CPI increase allowed under AB 1482. States of emergency are most often declared in California as a result of natural disasters (wildfire, earthquake, etc.).

Proposition 10 2.0 – Michael Weinstein's Rental Affordability Act: On the November 2020 ballot, Proposition 10.2.0 would allow cities and counties to: (1) impose rent control on buildings after they turn 15 years old, giving municipalities more power than under the 1995 Costa-Hawkins Rental Housing Act; and (2) apply vacancy controls such as preventing a landlord from increasing the rental rate more than the permissible cap, even where no tenant resides in the unit.

SB 329 – Source of Income Discrimination: Senate Bill ("SB") 329 clarifies "source of income" for purposes of the provisions of the California Fair Employment and Housing Act to mean verifiable income paid directly to a tenant or to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance and housing subsidies, as specified.[13] The bill would also specify that, for the purposes of this definition, a housing owner is not considered a representative of a tenant.

SB 222 – Mandatory Acceptance of Veterans Affairs Supportive Housing Vouchers: SB 222 prevents landlords from discriminating against tenants on the basis of veteran or military status and specify that "source of income" includes federal Department of Housing and Urban Development Veterans Affairs Supportive Housing vouchers.

SB 644 – Lower Security Deposits for Military: SB 644 prevents a landlord from demanding or receiving a security deposit greater than one months' rent for an unfurnished residential property, or two months' rent for a furnished residential property, when the tenant is a military service member.

****

Please contact Sheppard Mullin with any questions.

Nancy Scull
619.338.6592
nscull@sheppardmullin.com

Whitney Hodges
619.338.6542
whodges@sheppardmullin.com

Kelsey Clayton
619.338.6556
kclayton@sheppardmullin.com

Marko Valentine
619.338.6668
mvalentine@sheppardmullin.com

[13] See prior post on SB 329 here.