

LET'S TALK ABOUT RENT: NEW LANDLORD LAW SPARKS CONCERN

When Gov. Gavin Newsom signed Assembly Bill 1482 into law early last month, it sent many residential landlords — along with multi-family home developers — into a tizzy.

The Tenant Protection Act of 2019's primary task is to set an annual cap on residential rent increases across the state, which for Valley apartments and some single-family rental units will be 8.34% when the law takes effect Jan. 1, 2020.

It includes a "tenant protection law" that would require landlords evicting tenants for reasons other than "just cause" to pay them the equivalent of a month's rent or make the last month's rent free.

This is worrisome to residential property owners, in part because of confusion over who is affected, what to include in rent increases and how it will affect the bottom line.

There are concerns that imposing more rules and costs could stifle construction of new multi-family housing that California desperately needs.

Irony is evident

That would be ironic, as the state-wide rent control law was meant to keep rental rates down and give the state some breathing room until its housing inventory can be elevated, which in itself likely would lower or at least help stabilize rental rates. "Rents have been rising in some communities greater than 7%, 8%, 9%, so it was only a matter of time until we saw the Legislature would want to put something into effect," said Robin Kane, senior vice president of Fresno's Mogharebi Group, which specializes in brokering real estate deals on multi-family housing. On Nov. 4, he served as moderator for a group of five other local real estate experts gathered at Fresno State for a discussion put on by the university's Gazarian Real Estate Center.

Caps in effect

The bill caps rent increases over a one-year period at 5% of the current gross rent plus the local rate of inflation as measured by the Consumer Price Index (CPI), with a maximum combined increase of 10 percent. The CPI, which is determined every April 1 by the state Bureau of Labor Statistics, has separate numbers for the San Francisco, Los Angeles and San Diego regions, while the Valley and the rest of the state have a statewide CPI currently of 3.34%. So affected housing here could have rents raised up to 8.34%, with a maximum of two increases a year, which combined cannot exceed the cap. As the CPI changes year to year, the cap may go up or down.

What's going on?

Since the bill was signed into law, confusion has been the main reaction among landlords, said Greg Terzakis, senior vice president of the Central California Apartment Association. He noted that many owners didn't pay attention to the legislation until after the governor signed it, and "Subsequently, there has been a lot of confusion." Not to mention culture shock here in the Valley, where rent control isn't as prevalent as in San Francisco and other big, urban parts of California. Even though Terzakis said he believes rental rates tend to be high here relative to tenant income, "historically, we have not seen 8% percent a year rent increases here consistently, so I think it will affect us a little less than other places. "And I think it will be at least through the first quarter of 2020 for people to understand how this is really going to impact their businesses."

Holdover fees

One exception to that trend are holdover fees, where landlords charge higher rents — sometimes 30 percent or more — to tenants whose leases have expired, but they want to stay a few extra weeks or months before moving. Kane said the state rent-control provisions apply to those agreements, too. As for the types of residential properties affected, the law applies only to those with certificates of occupancy 15 years or older at the time the new law takes effect, and it will apply to those that turn 15 while it's in effect. For those properties affected, the rent increase cap applies to renewing leases, not in setting the lease prices for new tenants moving into vacant apartments.

Exemptions listed

As for what other residences are exempt, the list includes: -Rented single-family homes and individual condominiums if the owner is not a real estate investment trust, a corporation or a limited liability company with a corporation as a member. – Single-family homes where the live-in owner rents out no more than two new bedrooms or accessory dwelling spaces: in-law suites, granny flats, etc. – A duplex with the owner occupying at least one of the units. – Deed-restricted (affordable housing) properties. – Transient and tourist hotels. – Dormitories. – Housing for non-profit hospitals, religious facilities, extended-care facilities. “Individual condominiums are exempt,” but if you’re leasing out units in a condominium, you aren’t, stressed Jack Schwartz, a Hanford real estate attorney specializing in rental housing.

Round down

For properties with some corporate ownership to become exempt, “you will have to talk to your real estate attorney and your tax advisor and figure how to take care of that issue,” as the law allows no exceptions, he said. The attorney warned that in areas affected by the law, when calculating rent increases based on the maximum allowable percentages, if the amount doesn’t come out to be a whole number, it’s best to round down rather than up. There may not be many instances where landlords opt to hike rents that much in the Valley, said Schwartz, noting that most every independent rental owner in the Valley he has spoken to about the new law has asked him, “Why would I want to raise rents that much? I’ve got good tenants.”

Eviction impacts

As such, Michael Goldfarb, CEO of Fresno-based Manco Abbott Real Estate Management, said his staff initially was concerned about AB 483, but soon, “We realized it’s probably not as bad as it could have been. From our estimation, the only real issue with this law is the just-cause eviction problem and the amount of paperwork we now have to become involved with to let the residents know what they’re going to have to expect from us going forward in the future.” Violations of the law — including noise issues, fighting and criminal activity — are grounds to evict tenants without having to pay them anything, as are evictions for violations of their lease agreements. “That’s a no-brainer. They’re out,” Kane said. Evictions become trickier if non-criminal acts to justify evictions aren’t spelled out well in leases, or in cases where apartments are rented on handshake agreements. “If anybody is operating on a non-written lease or rent agreement, even month to month, the first thing you need to do is put it in a written rental agreement,” Schwartz warned. “The days of being polite and informed are history, because now you have to pay for everything.”

It’s tricky

“Where it really becomes tricky is if I have an apartment and want to renovate it” and need to relocate tenants more than 30 days, Kane said. Landlords have been able to evict tenants in order to do long-term renovations or repairs and then re-rent the finished units, but 1482 is changing that. “[The renter] has a right to say, ‘I don’t want to move. If I do have to move, you owe me one month’s free rent,’” Kane said. “It’s called ‘relocation assistance.’ So that last month is free or you write them a check.” As such, rental owners may have to decide whether to do major repairs and renovations all at once — possibly having to pay tenants one month’s rent if they’re evicted — or dealing with the added time and costs of doing the work a little at a time, as tenants move out of each unit. But the experts noted that some construction financing agreements require such work to be done within a certain time, so if the work isn’t done all at once, they might not be able to come up with the financing to do it at all.

Into the sunset

Once AB 1482 takes effect at the start of the coming year, it will stay in effect until sunset after 10 years. For his part, Kane said other problems for landlords may involve some unclear provisions, including whether ancillary fees — including those for parking and for having pets — should be included as rent in the calculations, and whether likely legal challenges and cleanup legislation to aspects of the new law may change how it’s interpreted.

While the 10 years is intended to give the state time to “get its act together,” and build more housing, “If there is not a follow-up step to build aggressively all kinds of housing — market rate, affordable, tax credit, and transitional — this problem is not going away,” Terzakis said of California’s housing crisis.