

Kimball, Tirey & St. John LLP

Legislative Update 2021

December 2020

The legislative session for 2019-2020 has come to a close. Below is information about new California laws for 2021 along with other trends which will affect California residential landlords. While this article mentions the laws passed during the 2019-2020 legislative session, we anticipate that there will be additional legislation passed in the early part of 2021 related to the COVID-19 pandemic.

For your convenience, the new laws and trends are divided into three sections: Landlord/Tenant, Affordable Housing and Fair Housing.

This article does not include information about new local ordinances. This update is not meant to be exhaustive and does not take the place of legislative services or memberships in trade associations. Please reach out to our office with fact specific questions related to local city or county ordinances, resolutions, or regulations.

Landlord/Tenant Laws and Trends

[AB 3088](#) The COVID-19 Small Landlord and Homeowner Relief Act of 2020: This bill establishes a moratorium on no cause evictions on residential properties until January 31, 2021. It also provides an opportunity for residential tenants to avoid eviction proceedings and transmute their rental debt provided tenants follow certain conditions. The rental amounts are still owed, but there are limitations in using unlawful detainer actions to collect the debt. There were also several changes to Small Claims Court in order to provide landlords with an avenue to try to collect the debt. It also provides technical amendments to AB 1482 – the Tenant Protection Act of 2019 relating to CPI increases. An article with more information is available at [Governor Signs the COVID-19 Tenant Relief Act \(AB 3088\) Into Law](#). AB 3088, when originally passed, was intended as a temporary measure to help tenants who have been impacted by the pandemic. The state legislature is already reviewing proposals for an extension of AB 3088.

[SB 1196](#) Price Gouging: Expands and codified provisions in Gavin Newsom’s Executive Order on price gouging. The changes to the law added “pandemic or epidemic disease outbreak” as a possible trigger to limit price increases. It also provided the ability to extend the prohibitions on price gouging beyond 30 days if the extension is ordered by the Governor. Local legislative bodies are still limited to extensions of 30 days at a time. Lastly, it provides direction to persons, contractors, businesses, or other entities that did not charge a price for goods or services prior to the declaration. In a case where a good or service was not offered or advertised, the price should be set no higher than at 50% above the cost to the vender as defined in [Bus & Prof. Code Section 17026](#).

[AB 3182](#) Homeowner Associations - Rentals: AB 3182 expands the rights of properties subject to HOAs to use their properties for rentals. It does not allow HOAs to unreasonably restrict rentals (provided that the rentals are not transient or short-term rentals of 30 days or less). It requires common interest developments to allow at least 25% of the units to be used as rental homes. It also will deem an application to a local governmental agency to create an accessory dwelling unit or junior accessory dwelling unit approved if there is no action within 60 days (previously it would require actual approval). Further, AB 3182 requires the approval of the

creation of one of these units per lot with a single-family dwelling if certain requirements are met.

[AB 3254 Document Translations - Cosigners:](#) AB 3254 modifies and extends the requirements under Civil Code Section 1632. The code section requires that prior to the execution of a contract, the parties provide a translated version of the contract to the parties, if any part of the contract was negotiated in Spanish, Korean, Chinese, Tagalog, or Vietnamese. This requirement will now extend to any party that is signing the contract. AB 3254 also clarifies under what conditions a landlord would not be required to provide a translated version of the lease if a tenant obtains their own interpreter.

[SB 1030 Housing Accountability Act:](#) If an owner of an accessory dwelling unit receives a notice to correct violations or abate nuisances for non-compliance of housing law, they may submit an application to delay the enforcement of the violation for 5 years provided the violation does not affect the health and safety of the unit.

[SB 1079 Residential Property - Foreclosure Requirements:](#) AB 1079 provides several amendments to the notice requirements prior to foreclosure and additional bidding rights to purchasers to buy the property after the sale. First, if the property has four or fewer units, a Notice to Tenants must be provided informing tenants of their rights to purchase the property at foreclosure. If more than one property is encumbered by a deed of trust, the new law also requires a trustee to sell off properties separately instead of bundling them unless the deed of trust requires otherwise. At the foreclosure sale, if the property is purchased by a prospective owner occupant, the sale will be final. If the highest bidder at the sale is not a prospective owner occupant, then an eligible tenant or eligible bidder may have the opportunity to place a bid/purchase the property after the initial highest bidder post sale. These amendments will be valid until January 2026.

The bill also codifies two other changes that do not have an expiration date related to relocation and blight. First, the bill states that a purchaser of a property at foreclosure is required to follow all laws related to removing tenants including notice requirements, right of return, relocation requirements and just cause. Second, it increases the penalty for blight across these properties. After a foreclosure, the new owner must maintain vacant property or face a civil fine. The penalty increased to \$2,000 per day for the first 30 days and \$5,000 per day thereafter. The owner should be provided with a notice and opportunity to cure prior to the imposition of the penalty.

[SB 1117 Utilities - Credits to Tenants:](#) Modifies [Public Utilities Code §739.5](#) (relating to submetered electrical and gas), and changes the definition of electrical corporation to a wider definition of “load-serving entity”. It requires that if a landlord receives a rebate as a master meter customer, it must be passed along to the sub-metered tenants. It still excludes the incentives received from solar incentives from this rebate requirement.

[SB 1190 Tenant’s Right of Termination - Victim of Crime:](#) Amends Civil Code §1946.7 to expand existing law that permits tenants to terminate their tenancy without penalty if they are the victim of crime. The expansions include: the list of crimes that trigger the law, the type of victim that permits the tenant to terminate, and the documentation that will support the termination. It also prohibits an owner or agent from denying an otherwise qualified applicant simply because they previously exercised the right.

First the law expanded the type of crime to include crimes that included bodily injury or death. There are eight categories of crimes that trigger the law. Second, it expanded the type of victim eligible to exercise the right. Now a crime that happens to the tenant, any household member, or an immediate family member will also trigger this protection. An immediate family member is “parent, stepparent, spouse, child, child-in-law, stepchild, or sibling of tenant, or anyone living in the household...” Lastly, in addition to previously accepted forms of documentation, it will permit “any form of documentation that reasonably verifies that the crime or act...occurred.”

[AB 1788 California Ecosystems Protection Act of 2020 - Use of Pesticides:](#) Amends Food and Agriculture Code §12978.7, to create a state mandated local program to prevent the use of any second generation anticoagulant rodenticides (SGARs) in California unless the user meets an exemption. The purpose is to prevent the effect of these chemicals on the non-target organisms, natural predators, and endangered species.

[AB 3074 Fire Prevention:](#) California has faced some of the worst destruction from raging wildfires in the last few years. Existing law provides that any person who owns, leases, controls, operates or maintains an occupied dwelling or structure in a mountainous area, forest covered land, brush covered land, grass covered land, or land covered with flammable material within a very high fire hazard severity zone must maintain a defensive space of 100 feet on each side of the front and rear of the structure. AB 3074 enhances existing law to use more intense fuel reduction within 5 to 30 feet around structures, and to create an ember-resistant zone within 5 feet of structures.

[AB 2165 Electronic Filing and Service:](#) Amends Code of Civil Procedure §1010.6 and provides guidelines for the statewide electronic filing and service of documents in civil cases. It prevents e-filing charges from being more than the actual cost to file a document. It also provides the procedures for signing documents under the California Rules of Court. AB 2165 also tolls the statute of limitations if a filing is rejected for technical defects. This law continues the trend toward moving to e-filing across the state.

[AB 3366 Judicial Emergency Powers:](#) The California Judicial Council has taken many emergency actions during the pandemic. The Chairperson of the Judicial Council now has the power, on their own, to enact certain provisions to provide transfers of a case, or extensions of time to proceed in Court due to emergency conditions that affect the ability of Courts to safely conduct business. Previously this ability was only provided upon the request of the presiding judge of a Superior Court.

COVID Legislation: There are currently multiple laws at the local, state and federal level that provide protections to tenants impacted by COVID-19. Even if landlords are permitted to proceed with a notice and/or eviction case under AB 3088 and the CDC moratorium, a landlord may be prohibited from proceeding under a city or county moratorium. While some local ordinances have expired with the lapse of Executive Order N-28-20, many local ordinances are not tied to that order, but instead to the local emergency, and are still in effect.

Local Rent Control and Just Cause Ordinances: Local rent control and just cause ordinances continue to be passed with increasing frequency. It is more important than ever for landlords and management to be acutely aware of local legislation that may impact their properties.

Privacy: Prop 24 “California Privacy Rights Act of 2020” (CPRA): Amidst increased reliance on the collection and use of personal digital data, and with continued reported incidents of large data breaches and misuse of personal digital data, we are seeing an increased legislative focus on consumer privacy. California passed several measures in 2018 creating the California Consumer Privacy Act (CCPA). In the recent election, voters passed Proposition 24, (CPRA), which broadened and makes permanent the protections provided by the CCPA. The CPRA becomes effective on or after January 1, 2022 (other than for access requests) but will not be operative until January 1, 2023. Some of the key changes to the CCPA are as follows:

- New types of personal information. The CCPA protected personal information such as social security number, driver license number and financial account number. The CPRA also protects “sensitive personal information”, including a consumer’s racial or ethnic origin, religious beliefs, union membership, the contents of a consumer’s email and text

messages (unless the business is an intended recipient), genetic information and a consumer's sex life and sexual orientation.

- New rights for consumers. For the new subset of personal information, "sensitive personal information", consumers will have the right to request limitations on the use and disclosure of that information. Also, consumers also will have the right to ask businesses to correct inaccurate personal information maintained by the business.
- Changes to the notice at time of collection. Several changes and clarifications were made to the requirement to provide consumers a notice at the time personal information is collected. For example, the notice must now include a retention period for each category of personal information and sensitive personal information or include criteria for determining the retention period if setting a retention period is not possible.
- Enhanced protections for children's data. The CPRA triples fines for collecting and selling information of minors under 16 years of age.
- Creates an enforcement arm. Establishes the California Privacy Protection Agency that, in addition to the California Department of Justice, will enforce and implement consumer privacy laws and impose fines.
- Adds a specific data security requirement. The CCPA did not expressly require businesses to maintain reasonable safeguards to protect personal information, although it added a private right of action for data breaches cause by a failure to maintain reasonable safeguards. The CPRA expressly requires businesses to implement reasonable security procedures and practices to protect personal information from unauthorized or illegal access, destruction, use, modification, or disclosure.
- Expands written agreement requirements. Businesses collecting personal information and then sharing/selling it to a third party or disclosing it to a contractor or service provider will need to enter into written agreements that contain certain required provisions. A few examples of the required provisions include (i) obligating the third party, contractor, or service provider to comply with CCPA/CPRA as applicable, and (ii) granting the business the right to take reasonable steps to ensure the third party, contractor, service uses the personal information consistent with CCPA/CPRA.
- Increased exposure to liability in the event of a data breach. The CCPA included a private right of action if a business experienced a data breach due to the failure to have reasonable safeguards to protect that information, and the failure to cure following notice. The CPRA adds a consumer's email with password or security question to the subset of personal information that, if breached, could trigger a private right of action, if a hacker was able to access a consumer's email account.

Our firm can assist clients with CCPA and CPRA compliance. Contact Kenneth Schnur at 800-525-1690 or kenneth.schnur@kts-law.com for assistance.

Affordable Housing

SB 1157 Tenant Credit Reporting: Creates new Civil Code §1954.06, which requires a landlord of an assisted housing development with 5 or more units to permit a tenant to have their rental payments reported to a nationwide consumer reporting agency. Beginning on July 1, 2021, the landlord must provide a written offer of this option at the time the lease is entered into and then annually thereafter. The tenant must provide the request in writing. If there are current leases or month-to-month tenancies, this offer must be provided by October 1, 2021. The tenant will also have the option of terminating the reporting, with which the landlord must comply. The landlord may charge the actual cost of the reporting or \$10.00/month, whichever is less. Failure to pay is not grounds for termination of the tenancy, nor can the landlord deduct this amount from the security deposit, nor report nonpayment of this amount to the credit reporting agency if it is not paid. The landlord's remedy for failure to pay the fee is merely to stop the reporting. There are also requirements as it relates to the security deposit. This law does not apply to housing that has 15 or fewer units unless the owner owns more than one assisted housing development, or the owner is a REIT, a corporation, or a LLC with at least one corporate

member. The definition of assisted housing development is the same definition as under [Govt Code 65863.10](#). This statute has a sunset date of July 1, 2025.

Fair Housing Laws and Trends

[SB 778/SB 1343 Sexual Harassment Prevention Training and Education](#): Passed in 2018, by January 1, 2020, under [SB 1343](#) employers with five (5) or more employees must provide at least two (2) hours of training and education regarding sexual harassment to all supervisory employees, and at least one hour of training and education to all nonsupervisory employees within 6 months of hire and once every two (2) years thereafter. (Previous law required employers with 50 or more employees provide sexual harassment training to supervisory employees and did not mandate sexual harassment training for nonsupervisory personnel.) In 2019, [SB 778](#) changed the deadline for sexual harassment training to **January 1, 2021**.

[AB 3308 Housing Priority for Teachers](#): A law passed in an effort to provide affordable housing for teachers and school district employees. This law will permit a school district or any developer in receipt of local or state funds or tax credits designated for affordable housing to restrict occupancy to teachers and school district employees on land that is owned by school districts, so long as it does not violate any other law.

Criminal Background Checks: HUD and DFEH have increasingly been scrutinizing the use of criminal background checks over the last few years. The protections and ability to run a criminal background check on applicants has narrowed significantly in California with the enactment of the Fair Employment and Housing Council regulations on January 1, 2020. Some local jurisdictions have created even stronger protections. Several cities have taken further action to limit, or even prohibit, the use of criminal background checks in housing.

For Fair Housing assistance, contact FairHousing@kts-law.com.

It is wise to review your leases, house rules, policies and procedures to make sure they are in compliance with new laws. Our firm can assist our clients in reviewing leases, policies and procedures. Contact Jamie Sternberg at 800-574-5587 or jamie.sternberg@kts-law.com if you are interested in a review.

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