



## Housing Practice Tip - February 2024

### Closing Loopholes in the Tenant Protection Act

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Last year, the housing justice community came together to close loopholes in California's anti-rent gouging and just cause eviction protection ordinance. The Homelessness Prevention Act, SB 567 (Durazo) (Chapter 290, Statutes of 2023), amended the Tenant Protection Act (TPA) (AB 1482, Chiu) (Chapter 597, Statutes of 2019) to provide greater protections for California's tenants. After several years of monitoring how TPA defenses played out in the courts, and with feedback from advocates across the State, we identified loopholes that left tenants vulnerable to eviction when they should have been protected. Because the TPA lacked sufficient parameters in certain no fault eviction provisions, landlords were asserting certain no fault just cause reasons for eviction without having to demonstrate intent. This was most rampant when landlords asserted owner move-in and substantial remodel as the reason for eviction. Further, there was no explicit enforcement mechanism against bad actors.

SB 567 responded to those growing abuses of the TPA by making modest, but impactful changes to close the most easily exploitable loopholes and provide meaningful enforcement. The changes enacted by SB 567 take effect on April 1, 2024.

#### **WHO IS COVERED BY THE TENANT PROTECTION ACT?**

Tenants in most multi-family units are covered by the TPA. However, the TPA doesn't apply to:

- Single family homes unless they are owned or controlled by a corporation;
- Units constructed in the past 15 years;
- Duplexes in which the owner is living in one of the units at the time the tenancy in the other unit commences, but only so long as the owner continues to live there;

- Affordable housing subject to deed restrictions, regulatory agreement or other agreement with a government agency;
- Dorms;
- Housing in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, or an adult residential facility;
- Transient and tourist hotel occupancies;
- Housing accommodation in which the tenant shares bathroom or kitchen facilities with the owner who lives at the property; and
- ADUs and Junior ADUs

If the unit is not covered by the TPA, they may be covered by a local ordinance.

### **ARE SECTION 8 HOUSING CHOICE VOUCHER (HCV) RECIPIENTS COVERED?**

Yes, both the just cause and rent cap apply to Section 8 voucher holders. In June 2023, Attorney General Rob Bonta sent a [letter](#) to all public housing authorities stating that the rent cap provision of the TPA applied to Section 8 Housing Choice Voucher participants. In February 2024, the U.S. Department of Housing and Urban Development sent guidance confirming that the rent cap does apply to HCV recipients ([attached](#)).

### **ARE MOBILE HOMES COVERED?**

Partially. Mobilehome residents have just cause protections against at-fault and no-fault evictions, if they meet certain criteria, but they may not be covered if they are renting the mobilehome from an individual mobilehome owner. The rent cap only applies if the resident is renting the mobilehome from the mobilehome park owner.

### **WHAT IS THE ALLOWABLE RENT INCREASE?**

California limits the amount that a landlord can raise the tenant's rent. The rent cannot be raised over any 12-month period more than the rate of inflation (Consumer Price Index or "CPI") + 5%. The rent can only be raised twice within any given 12-month period, but in no case can the rent be raised more than 10%.

### **WHAT ARE JUST CAUSE NO FAULT EVICTIONS?**

California law limits the reasons why a tenant can be evicted - no fault (because something the landlord wants to do with the property) and at fault (because something the tenant has done or refuses to do). This section will focus only on no fault reasons for evictions.

*Owner move-in (Updated by SB 567[1]):* The landlord may evict a tenant for owner move-in but must follow certain steps.

1. The eviction notice must identify the names and relationship of each person who will be moving into the unit.
2. The owner or relative must move into the unit within 90 days after the termination of the *tenancy* and must live there for 12 months. If either of those conditions are not met, the tenant has the right to return to the unit at the prior rental rate and under the prior lease terms.
3. The owner cannot use this provision if the intended occupant already occupies a unit on the property or if there is a vacant unit on the property available.
4. An owner is defined as a natural person who owns at least 25% interest in the property except:
  - a. Where the property is owned in a trust in which all the owners are related (as defined). The owners of a trust can use owner move-in, even if they own less than a 25% interest in the property.
  - b. Where the property is owned by an LLC or partnership, a natural person with at least a 25% ownership interest in the LLC or partnership can use owner move-in.

**Substantial remodel (Updated by SB 567[2]):** Substantial remodel means the replacement or substantial modification of the property structure, or the plumbing, electrical, or mechanics for the unit that cannot be completed safely with the tenant in place and will require the tenant to vacate for at least 30 consecutive days. Cosmetic improvements alone do not qualify as substantial remodel. The landlord can use substantial remodel to evict a tenant only if certain steps are followed:

1. For substantial remodel work that requires a permit, the landlord must attach the permit to the eviction notice.
2. For the narrow category of substantial remodel that does not require a permit, the owner must attach a signed contract with the contractor who will perform the work to the eviction notice.
3. The eviction notice must state that if the owner does not carry out the repairs, any displaced tenant may return at the prior rent and under the prior lease terms.

**Withdrawal from the rental market:** The owner can evict a tenant to withdraw the unit from the rental market. This includes:

1. The owner complying with a government agency or court order relating to the habitability of the property that necessitates vacating the property, an order to vacate the property or a local ordinance that requires vacating the property;
2. Intent to demolish the property; or

3. Ellis Act evictions.

*Relocation payments:* If a tenant is evicted for no-fault just cause reasons, the landlord must make a relocation payment to the tenant equal to one month's rent or a waiver of the final month's rent. The landlord must make the relocation payment to the tenant no later than 15 days after giving the tenant the eviction notice.

**WHO CAN ENFORCE THE TPA?**

The landlord must strictly comply with the TPA, and any eviction notice must strictly comply with the TPA. If it does not, the tenant may raise as a defense that the notice is void and cannot support an eviction action.

Both the tenant and a local or state government agency can enforce the TPA. The state and local governments can bring an action for injunctive relief to enforce the just cause provisions and seek damages in an action for violations of the rent cap provisions of the TPA.

The tenant can receive up to three times their actual damages plus punitive damages for any attempt by the landlord to evict the tenant in a material violation of the TPA or for any attempt to raise the rent in violation of the TPA. A court may grant attorney fees and costs to the tenant.

If you have any questions about the TPA, please reach out to the WCLP housing team at [housing@wclp.org](mailto:housing@wclp.org).

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[1] Civil Code Section 1946.2

[2] *Id.*