

NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

LANDLORD-TENANT RELATIONSHIPS UNDER AB 1842 AND STATE AND COUNTY PANDEMIC ERA MORATORiums

DAVID P. BONACCORSI, ESQ.

Bernard, Balgley & Bonaccorsi, LLP
3900 Newpark Mall Road, 3rd Fl, Newark, CA 94560
T: 510-791-1888 E: dbonaccorsi@3blawfirm.com



NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

LEASING RESIDENTIAL REAL PROPERTY IN CALIFORNIA

- Costa-Hawkins and Local Rent Control
- Vacancy Decontrol
- Civil Code § 1632: Negotiations in Chinese, Spanish, Tagalog, Vietnamese or Korean
- Unlawful Detainer
- 30/60 Day Notices to Terminate



NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

AB 1482: Tenant Protection Act of 2019

- Exemptions/Snooze-and-Lose Provisions
- RENT CAPS AND JUST CAUSE EVICTION (JCE)
- JUST CAUSE EVICTION: At-Fault and No-Fault
- JCE No-Fault: Relocation Assistance
- Required Disclosure (Civil Code § 1632)
- 60-Day Lease Termination
- Do Local rent control /JVE Ordinances still apply?



NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

EXEMPTIONS

- *Rolling 15-Year Certificate of Occupancy* For New Rental Housing (Pre-95: Cost Hawkins Still Applies To Local Ordinances)
- *Single Family Residential Rentals* (No REITs, Corps or LLC Corp Members):
Snooze-or-Lose
- Owner-Occupied SFR With 2 Renter Cap; Duplexes Where One Unit is Owner-Occupied/ SFR 2 Other Renters Cap/Shared Bathroom and Kitchen
- Deed-Restricted Affordable Housing/Transient & Tourist Hotels Tenant Occupancy 12/24 Month Rules (all Ts 12 mos. or until 1T 24 mos.)



NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

RENT CAPS

- Annual Rent Increases Capped at Lower of 10% or 5% Plus Regional CPI Inflation (Rent Cannot Be Increased More Than 2 Times Per Year)
- www.dir.ca.gov/OPRL/CAPriceIndex.htm
(Regional CPI/If not available then California CPI: April to April)
- Clawback Cap to 3/15/2019: Excess Rent Increase Reduced To Current Cap
- No workaround sub-leases

NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

NEW NOTICE UNDER AB 1110 FOR RENT INCREASES FOR TENANTS NOT SUBJECT TO RENT CAPS (Effective 1/1/2020)

For Tenants Under AB 1482, rent caps cannot exceed 10% annually.

For Tenants who are not covered by AB 1482 or more stringent local rent control, for month-to-month tenancies, 90-day minimum notice for rent in excess of 10% annually under Civil Code section 827(b)(3)(A) (Formerly only 60 days)

NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

JUST CAUSE EVICTION: AT FAULT

- Default in Rent: But limited or banned under CTRA/SB 91 or Local City Or County Rent Moratoriums during COVID-19
- Material Breach of Lease (Criminal Activity; Improper Assignment/Subletting; Tenant Non-Renewal Of Fixed Leased; Committee Waste Plumbing) Damage/Denied Access (Emergency/Repairs/Staging/Water-Conserving
- 3-Day Notice To Cure/ If Uncured: 3-Day Notice To Quit



NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

NO-FAULT JUST CAUSE

- Family Move-In: ***Snooze-and-Lose***
- Removing Property From Rental Market
- Government Agency Habitability, Local Ordinance/
Court Order Vacating Premises
- Demolish/Substantial Remodel – Defined Under
Civil Code §1946.2(b)(2)(D)(ii)
- Relocation Benefit: 15-Day Payment: within 15 days
of service of notice or Waiver of one month's rent

NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022



RENT CAP AND JUST CAUSE ADDENDUM (C.A.R. Form RCJC, 12/19)

The following terms and conditions are hereby incorporated and made part of the Residential Lease or Month-to-Month Rental Agreement dated _____ on property known as _____ in which _____ is referred to as "Tenant" and _____ is referred to as "Landlord".

I. RENT CAP AND JUST CAUSE ADDENDUM TERMS

With certain exemptions, landlord may be subject to the rent cap and just cause eviction provisions of the Civil Code. Landlord informs tenant of the following:

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 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.

II. RENT CAP REQUIREMENTS

1. Subject to certain provisions of Civil Code Section 1947.12 subdivision (b), an owner of real property shall not increase the rental rate for that property more than 5 percent plus the percentage change in the cost of living, or 10 percent, whichever is lower, of the lowest rental amount charged for that property at any time during the 12 months prior to the effective date of the increase.
2. If the same tenant remains in occupancy over any 12-month period, the gross rental rate shall not be increased in more than two increments over that 12-month period.
3. For a new tenant in which no tenant from the prior tenancy remains, the owner may establish the initial rate not subject to paragraph 1 of this section. Paragraph 1 of this section is only applicable to subsequent increases after the initial rental rate has been established.

III. JUST CAUSE REQUIREMENTS

WITH CERTAIN EXEMPTIONS, LANDLORD MAY BE SUBJECT TO THE JUST CAUSE PROVISIONS OF CIVIL CODE SECTION 1946.2 AND INFORMS TENANT OF THE FOLLOWING:

1. At-fault Just Cause:

- a) Default in payment of rent.
- b) Breach of a material term of the lease, as described in Code of Civil Procedure Section 1161, paragraph (3), including but not limited to, violation of a provision of the lease after being issued a written notice to correct the violation.
- c) Maintaining, committing, or permitting the maintenance of a nuisance as described in Code of Civil Procedure Section 1161, paragraph (4).
- d) Committing waste as described in Code of Civil Procedure Section 1161, paragraph (4).
- e) The tenant had a written lease that terminated on or after January 1, 2020, and after a written request or demand from the owner, the tenant refused to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions, provided that those terms do not violate Section 1946.1 or any other provision of law.
- f) Criminal activity by the tenant on the residential real property, including any common areas, or any criminal threat, as defined in Penal Code Section 422, subdivision (a), directed to any owner or agent of the owner of the premises.
- g) Assigning or subletting the premises in violation of the tenant's lease.
- h) The tenant's refusal to allow the owner to enter the residential real property pursuant to a request consistent with Civil Code Sections 1101.5 and 1954, and Health and Safety Code Sections 13113.7 and 17926.1.

© 2019, California Association of REALTORS®, Inc.
RCJC 12/19 (PAGE 1 OF 3)



RENT CAP AND JUST CAUSE ADDENDUM (RCJC PAGE 1 OF 3)

Produced with zpl® orm® by zplLogic 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zplLogic.com

- i) Using the premises for an unlawful purpose as described in Code of Civil Procedure Section 1161, paragraph (4).
- j) When the tenant fails to deliver possession of the residential real property after providing the owner written notice of tenant's intention to terminate the hiring of real property or makes a written offer to surrender that is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice.

At-fault just cause eviction:

Before the owner can terminate the tenancy for an At-fault Just Cause violation that is curable, the owner must first provide notice to cure giving the tenant an opportunity to cure the violation pursuant to Code of Civil Procedure Section 1161, paragraph (3).

2. No-fault Just Cause:

- a) Intent to occupy the residential real property by the owner or their spouse, domestic partner, children, grandchildren, parents or grandparents (Family move-in).
For leases entered into on or after January 1, 2020 or amendment to existing leases prior to January 1, 2020:
Tenant and Owner hereby agree that the Owner shall have the right to terminate the lease if the Owner, or their spouse, domestic partner, children, grandchildren, parents or grandparents, unilaterally decide to occupy the residential property.
- b) Withdrawal of the premises from the rental market.
- c) Unsafe habitation, as determined by a government agency that has issued an order to vacate, or to comply, or other order that necessitates vacating the residential property.
- d) Intent to demolish or 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 that cannot be accomplished in a safe manner with the tenant in place, and that requires tenant to vacate the residential real property for at least 30 days. Cosmetic improvements alone do not qualify.

Tenant Payments under No-Fault Just Cause Eviction:

1. If Owner issues a termination of tenancy under a No-Fault Just Cause, Owner notifies Tenant of the right to direct payment relocation assistance equal to one month of the tenant's rent in effect at the time of the termination and shall be provided within 15 calendar days of service of the notice.
2. In lieu of direct payment, Owner may waive the payment of rent for the final month of tenancy prior to the rent becoming due. The notice shall state that the amount of rent waived and that no rent is due for the final month of tenancy.

IV. SPECIFIC EXEMPTIONS TO JUST CAUSE EVICTION REQUIREMENTS:

1. Housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner who maintains their principal residence at the residential real property.
2. Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than two units or bedrooms, including, but not limited to, an accessory dwelling unit.

V. SPECIFIC EXEMPTIONS TO BOTH RENT CAP AND JUST CAUSE EVICTION REQUIREMENTS:

1. Housing that has been issued a certificate of occupancy within the previous 15 years.
2. 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.
3. **Single Family Residential property (including a condominium and units in planned developments) provided the residential real property is alienable separate from the title to any other dwelling unit AND (i) the owner is NOT a real estate investment trust (REIT), (ii) the owner is NOT a corporation, and (iii) if the owner is a limited liability company, then NONE of the members of the LLC are corporations.**

This exemption only applies if the notice below is checked and delivered to the tenant.

- ☐ Landlord hereby notifies tenant that the Property is exempt from the rent cap provisions specified in Civil Code Section 1947.12 and the just cause eviction provisions specified in Civil Code Section 1946.2.

Notice of Exemption:

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 (d)(5) and 1946.2 (e)(8) 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.

RCJC 12/19 (PAGE 2 OF 3)

RENT CAP AND JUST CAUSE ADDENDUM (RCJC PAGE 2 OF 3)

Produced with zpl® orm® by zplLogic 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zplLogic.com



NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

Do local rent control / just cause
eviction ordinances still matter?

NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

LOCAL ORDINANCES AND AB 1482

- AB 1482 JCE doesn't apply where local ordinance JCE is either:
 - enacted ***before*** 9/1/19
 - enacted/amended ***after*** 9/1/19 if “more restrictive”
- AB 1482 Rent Caps do not apply if local ordinances have more restrictive rent control than AB 1482.
- Costa-Hawkins and Multi-Tiered Rent Regulations Pre-2/1/1995 and AB 1482 (Pre-and-Post 15 year COO)
- AB 1482 applies in Fremont to non-exempt property. Fremont's Rent Review Ordinance (RRO) (Informal Resolution/Rent Review Board) Applies Only To Property Exempt from AB 1482



NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

What is the property manager's role in assisting Seller or Seller's Realtor in a sale of residential property where an existing tenant occupies the property?

NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

AB 3088 (The Covid-19 Tenant Relief Act of 2020 (CTRA) and SB 91 Residential Tenant Eviction Ban under AB 832 until 9/30/21

- 1) AB 3088/CTRA became law September 1, 2020
- 2) CTRA, then SB 91 and then AB 832 since 6/29/21 is the Statewide law
- 3) Santa Clara County did not renew its residential eviction ban moratorium until 8/25/2020 so governed by CTRA/SB 91 since 9/1/2020.
- 4) AB 832 extended CTRA/SB 91 eviction ban up through 10/1/2021 in limiting landlord recovery of COVID-19 Rental Debt for qualifying tenants to 25% rent due from 9/1/2020 through 9/30/2021 – the “transition time period”)



NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

CTRA/SB 91/AB 832 (Cont.)

New Tenant Debt Collection

1) Four kinds of rental debt by Tenant who: (a) fails to declare COVID-19 declaration of financial distress (“COVID-19 Declaration”) and must pay all rent due who refuses or ineligible to qualify for rental assistance; (b) submits COVID-19 Declaration for 3/1/2020-8/31/2020 during “protected time period” (3/1/20-8/31/20) (c) submits COVID-19 Declaration during “transition time period” (9/1/20-9/30/21) only 25% COVID-19 Rental Debt rent due to avoid eviction; (d) for the “recovery period rental debt” (10/1/21-3/31/22) up to 100% of past rent for qualifying tenants from 10/1/21-3/31/22 from governmental rental assistance for eligible tenants.

2) 100% of rent deferred from 3/1-8/31/20 and 75% rent deferred from 9/1/20-9/30/2021 may be brought in Small Claims with no caps on amount. The rent is treated as a consumer debt and cannot be used as a basis to evict a tenant. Small claims courts available to recover past deferred rental debt as of November 1, 2021.

NARPM SANTA CLARA COUNTY CHAPTER

AUGUST 18, 2022

SB 91/AB 832

New Documentation With UD Complaint Showing Rental Assistance Efforts And Tenant Right To Invoke AB 832 as a Defense

- 1) Landlord must show good faith effort at investigating rent relief
- 2) Sought governmental or third party assistance for resident
- 3) Cooperated with tenant in seeking rent relief
- 4) Applies to both nonpayment of COVID-19 Rental Debt in the “protected period” and during the “transition time period” in small claims or nonpayment for failure or refusal by T to submit COVID-19 Declaration.
- 5) If Tenant fails to submit COVID-19 Declaration in response to a 15-Day Notice to Pay Rent or Quit, Tenant during the covered time period can still raise right to COVID-19 relief in answer to UD.

ALAMEDA COUNTY EVICTION MORATORIUM

- The residential eviction ban in Alameda County remains in effect even after the AB832 eviction ban ended 9/1/20 for every other county in the State.
- Alameda County Eviction Moratorium applies Countywide
- Exceptions to Ban (Remove property from rental market; vacated by court or agency order; imminent threat to health or safety (other than COVID-19).

ALAMEDA COUNTY ORDINANCE

- For tenants who qualify for COVID-19 relief, in Alameda County rent due 12 months from date due but CTRA ends 12-month rolling rent deferral on March 1, 2021 and repayment by March 1, 2022.
- Eviction ban for all residential tenants extends to sixty (60) days after the County health emergency expires.



SPEAKER

DAVID P. BONACCORSI, ESQ.



David Bonaccorsi is a partner with the law firm of Bernard, Balgley & Bonaccorsi, LLP and has practiced law in Fremont and Newark since 1987. Mr. Bonaccorsi grew up in Fremont, graduating from Washington High School. He attended Santa Clara University, graduating magna cum laude with a Bachelor of Science degree, and then cum laude from the Santa Clara University School of Law. Mr. Bonaccorsi served as a former Fremont Council member on the Fremont City Council (2017-18). Previously he served, 10 years on the Fremont Planning Commission and was twice elected Planning Commission Chair. In addition to representing commercial and residential landlords in private practice, Mr. Bonaccorsi was on the Fremont City Council when it addressed the issue of rent stabilization and reformed its Rent Review Ordinance. Mr. Bonaccorsi is the legal advisor for the Chinese American Real Estate Association and has presented to CAREA and the Bay East Association of Realtors on AB 1482, the new Tenant Protection Act.

Q&A