

ATTACHMENT 11



LEXSTAT CAL CIVIL CODE 1954.52

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CIVIL CODE
Division 3. Obligations
Part 4. Obligations Arising from Particular Transactions
Title 5. Hiring
Chapter 2.7. Residential Rent Control

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Civ Code § 1954.52 (2011)

§ 1954.52. Conditions for owner to establish rental rates

(a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit about which any of the following is true:

(1) It has a certificate of occupancy issued after February 1, 1995.

(2) It has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units.

(3)

(A) It is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision, as specified in subdivision (b), (d), or (f) of *Section 11004.5 of the Business and Professions Code*.

(B) This paragraph does not apply to either of the following:

(i) A dwelling or unit where the preceding tenancy has been terminated by the owner by notice pursuant to Section 1946.1 or has been terminated upon a change in the terms of the tenancy noticed pursuant to Section 827.

(ii) A condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value. The initial rent amount of the unit for purposes of this chapter shall be the lawful rent in effect on May 7, 2001, unless the rent amount is governed by a different provision of this chapter. However, if a condominium dwelling or unit meets the criteria of paragraph (1) or (2) of subdivision (a), or if all the dwellings or units except one have been sold separately by the subdivider to bona fide purchasers for value, and the subdivider has occupied that remaining unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred, then subparagraph (A) of paragraph (3) shall apply to that unsold condominium dwelling or unit.

(C) Where a dwelling or unit in which the initial or subsequent rental rates are controlled by an ordinance or charter provision in effect on January 1, 1995, the following shall apply:

(i) An owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all existing and new tenancies in effect on or after January 1, 1999, if the tenancy in effect on or after January 1, 1999, was created between January 1, 1996, and December 31, 1998.

(ii) Commencing on January 1, 1999, an owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all new tenancies if the previous tenancy was in effect on December 31, 1995.

(iii) The initial rental rate for a dwelling or unit as described in this paragraph in which the initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, may not, until January 1, 1999, exceed the amount calculated pursuant to subdivision (c) of Section 1954.53. An owner of residential real property as described in this paragraph may, until January 1, 1999, establish the initial rental rate for a dwelling or unit only where the tenant has voluntarily vacated, abandoned, or been evicted pursuant to paragraph (2) of *Section 1161 of the Code of Civil Procedure*.

(b) Subdivision (a) does not apply where the owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with *Section 65915 of Division 1 of Title 7 of the Government Code*).

(c) Nothing in this section shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction.

(d) This section does not apply to any dwelling or unit that contains serious health, safety, fire, or building code violations, excluding those caused by disasters for which a citation has been issued by the appropriate governmental agency and which has remained unabated for six months or longer preceding the vacancy.

HISTORY:

Added Stats 1995 ch 331 § 1 (AB 1164). Amended Stats 2001 ch 729 § 2 (SB 985); Stats 2004 ch 568 § 4 (SB 1145).

NOTES:

Amendments:

2001 Amendment:

(1) Added subdivision designations (a)(3)(A), (a)(3)(B), (a)(3)(B)(i), and (a)(3)(C); (2) added the comma after "in a subdivision" in subd (a)(3)(A); (3) substituted "does not apply to either of the following:" for "shall not apply to" in the introductory clause of subd (a)(3)(B); (4) added subd (a)(3)(B)(ii); (5) substituted "in which the" for "whose" after "dwelling or unit" in the introductory clause of subd (a)(3)(C); (6) redesignated former subds (a)(3)(A)-(a)(3)(C) to be subds (a)(3)(C)(i)-(a)(3)(C)(iii); (7) amended the first sentence of subd (a)(3)(C)(iii) by substituting (a) "in which the" for "whose" after "in this paragraph"; and (b) ", may" for "shall" after "January 1, 1995"; (8) added the comma after "this paragraph may" in the second sentence of subd (a)(3)(C)(iii); (9) substituted "does" for "shall" after "Subdivision (a)" in subd (b); (10) substituted "the" for "any" after "construed to affect" in subd (c); and (11) amended subd (d) by substituting (a) "does" for "shall" after "This section"; and (b) "that" for "which" after "dwelling or unit".

2004 Amendment:

(1) Amended subd (a)(3)(B)(i) by substituting "1946.1" for "1946"; (2) amended subd (a)(3)(B)(ii) by substituting "the" for "such a" in the second sentence; (3) amended subd (d) by deleting the comma after "disasters".

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 335 "Landlord and Tenant: Rent Control" §§; 335.12A[1], [2].

12 Witkin Summary (10th ed) Real Property §§ 573, 574, 597.

Cal. Legal Forms, (Matthew Bender(R)) §§ 34B.23.

Matthew Bender(R) Practice Guide: *California Landlord-Tenant Litigation, chs. 1, 8.*

Law Review Articles:

Consumer Protection: The Legislature's Assistance to Tenants in a Tight Rental Market: Will it Work or Just End Up Making the Rental Market Even Tighter? 33 McGeorge LR 207.

Hierarchy Notes:

Div. 3, Pt. 4, Tit. 5, Ch. 2.7 Note

LexisNexis 50 State Surveys, Legislation & Regulations

Rent Control

NOTES OF DECISIONS 1. Generally

1. Generally

2001 amendment to *Cal. Civ. Code § 1954.52*, which provides that the exemption of certain apartment units from rent control laws does not apply to a condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value, is not a clarification of existing law but is a change to the law; consequently, the amendment can be given only prospective effect. *City of West Hollywood v. 1112 Investment Co.* (2003, Cal App 2d Dist) 105 *Cal App 4th* 1134, 130 *Cal Rptr 2d* 168, 2003 *Cal App LEXIS* 135, rehearing denied (2003, Cal App 2d Dist) 2003 *Cal App LEXIS* 268, review denied (2003, Cal) 2003 *Cal LEXIS* 2692.

Where apartment owners had received all required state approvals to convert their buildings into condominiums but had allowed one of the approvals to lapse and had not obtained a conditional use permit from the city, the individual units were not "alienable" within the meaning of the rent control exemption in *CC § 1954.52(a)(3)*; thus, the owners' buildings were still subject to the city's rent control law, and the city could properly bring an action against the owners for violation of its rent control law. *City of West Hollywood v. 1112 Investment Co.* (2003, Cal App 2d Dist) 105 *Cal App 4th* 1134, 130 *Cal Rptr 2d* 168, 2003 *Cal App LEXIS* 135, rehearing denied (2003, Cal App 2d Dist) 2003 *Cal App LEXIS* 268, review denied (2003, Cal) 2003 *Cal LEXIS* 2692.

CC § 1954.52(a) exempts certain apartment units from local rent control laws; one of the exemptions applies to a dwelling or unit if it is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision. *City of West Hollywood v. 1112 Investment Co.* (2003, Cal App 2d Dist) 105 *Cal App 4th* 1134, 130 *Cal Rptr 2d* 168, 2003 *Cal App LEXIS* 135, rehearing denied (2003, Cal App 2d Dist) 2003 *Cal App LEXIS* 268, review denied (2003, Cal) 2003 *Cal LEXIS* 2692.

Property owners' challenge to an ordinance, to the extent it was based on preemption by later-enacted state statutes, including *CC § 1954.52* of the Costa-Hawkins Rental Housing Act, *CC §§ 1954.50-1954.535*, and *CC § 51.2* of the Unruh Civil Rights Act, was subject to the three-year limit of *CCP § 338* rather than the 90-day limit of *Gov C § 65009*; the action was not one to attack, review, or set aside the county's decision to adopt the ordinance pursuant to § 65009(c)(1)(B), but the court emphasized that the holding applied only to claims of preemption by statutes enacted after the ordinance's adoption, and as *Cal Const Art I § 19* was already in existence when the ordinance was adopted, a facial attack on the ordinance as a taking of property would have been an attack under § 65009(c)(1)(B). *Travis v. County of Santa Cruz* (2004) 33 *Cal 4th* 757, 16 *Cal Rptr 3d* 404, 94 *P3d* 538, 2004 *Cal LEXIS* 6834.

Cal Civ Code § 1954.52

Property owners' petition for declaratory and injunctive relief against an ordinance's future enforcement was untimely because assuming that *CC § 1954.52(a)(3)(C)* of the Costa-Hawkins Rental Housing Act, *CC §§ 1954.50-1954.535*, subjected the county to a duty to repeal or amend the ordinance, that duty arose when the Act became effective, and as the period in *CCP § 338* began to run on the accrual of the cause of action pursuant to *CCP § 312*, an action to enforce the county's asserted duty had to be brought within three years of the initial violation; given the nature of the owners' claims, *CCP §§ 318, 319* were inapplicable. *Travis v. County of Santa Cruz (2004) 33 Cal 4th 757, 16 Cal Rptr 3d 404, 94 P3d 538, 2004 Cal LEXIS 6834.*

Gov C § 7060.2(d), and *CC § 1954.52(a)(1)*, can and should be harmonized by construing the former as an exception to the latter. *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles (2009, 2d Dist) 173 Cal App 4th 13, 92 Cal Rptr 3d 441, 2009 Cal App LEXIS 557*, review denied *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles (2009, Cal.) 2009 Cal. LEXIS 6863.*

CC § 1954.52, by its terms, does not affect the authority of cities to regulate or monitor the basis for eviction; hence, if *Gov C § 7060.2(d)*, authorizes cities to enact ordinances that regulate or monitor the basis for eviction, the statute is not affected by *CC § 1954.52(a)(1)*. *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles (2009, 2d Dist) 173 Cal App 4th 13, 92 Cal Rptr 3d 441, 2009 Cal App LEXIS 557*, review denied *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles (2009, Cal.) 2009 Cal. LEXIS 6863.*