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2022 Legislative Update for Residential Landlords and Property Managers

January 2022

The legislative session for 2021 has come to a close. Below is information about new California laws for 2022, compliance dates and other trends which will affect California residential landlords. While this article mentions the laws passed during the 2021 legislative session, we anticipate that there will be additional legislation passed in the early part of 2022 related to the COVID-19 pandemic and the COVID-19 Tenant Relief Act (CTRA).

For your convenience, the new laws and trends are divided into three sections: Landlord/Tenant, Compliance Updates, 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. It is not meant as legal advice. 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 81, SB 91, and AB 832 – The COVID Tenant Relief Act (CTRA) initially passed by **AB 3088** was extended and modified several times in 2021, with the last extension being AB 832. AB 832 extended the transition period through September 30, 2021. Therefore the "covered time" for COVID rental debt comprises the protected time period of March 1, 2020, through August 1, 2020, and the transition time period of September 1, 2020, through September 30, 2021. The statewide just cause requirement also extended through September 30, 2021, and has reverted back to pre-COVID restrictions as of October 1, 2021. However, local ordinances may still apply. AB 832 also created the Recovery Act related to COVID and set new requirements for notices and court procedures. See the linked article for more information: AB 832 Extends the COVID-19 Tenant Relief Act Through September of 2021 and Created the COVID-19 Rental Housing Recovery Act. KTS also offers additional training and support on these topics. You can schedule these options by emailing education@kts-law.com.

AB 1177 – Free Banking Alternative – Called the California Public Banking Option Act, this new law requires the California Treasurer to create a commission on or before September 1, 2022, to consider the feasibility of the creation of a State Bank for consumers who lack access to traditional banking. The commission has until July 1, 2024, to provide a market analysis as to whether it is possible. This is a first step in providing access to a zero fee, zero-penalty, federally insured transaction accounts for low-income Californians. If created, landlords would need to accept payments from this type of account.

AB 838 – Habitability Enforcement Complaints – AB 838 creates a state mandated local program that imposes new obligations on local code enforcement agencies. Beginning July 1, 2022, if a city or county receives a complaint related to substandard building conditions or lead hazards it must inspect the building for those hazards and notify the owner of the violations and how to remedy them, if any are found. The law further requires that free certified copies of the inspection report and/or any citations issued be provided to the complaining tenant as well as any other affected tenants, occupants, or agents. The local agencies are prohibited from creating unreasonable conditions prior to inspection or issuing a report. It also prohibits the

assessment of fees or other charges to the landlord or owner unless the inspection reveals material lead hazard violations or determines the building is substandard.

SB 60 – Short Term Rentals – SB 60 raised the maximum fines/penalties for violations of short-term rentals from $100 for the first violation, $200 for the second, and $500 for each additional violation in a year to $1,500, $3,000, and $5,000 respectively. There is language in the law that allows for reduction of damages based upon a hardship. The fine limits apply only to infractions that pose a threat to public health or safety. Short term rentals are residential dwellings that are rented for 30 consecutive days or less. “Residential dwelling” does not include commercially operated hotel, motel, bed and breakfast inn, or timeshare properties.

AB 978 – Mobile Home Rent Cap – AB 978 extends the protections under AB 1482, the Tenant Protection Act, to “qualified mobile home parks”. Rent increases will be limited to the lower of 3% plus CPI or 5%, of the lowest gross rent charged in the preceding twelve months. Mobile home parks will also be limited to a maximum of two increases in a twelve-month period. The initial rental rate term will be February 18, 2021, so all increases must comply with the law from that date. As with AB 1482, if an increase exceeds the maximum amount allowed, it must be lowered to the appropriate level on January 1, 2022. No refund for excess rents paid prior to January 1, 2022, is required. The mobile home rent cap has the same sunset date as AB 1482, which is January 1, 2030.

Compliance Updates

SB 1383 – Organics and Recycling – SB 1383 was originally passed in 2016 and establishes methane reduction targets. As of January 1, 2022, local jurisdictions must adopt local organics recycling programs consistent with SB 1383 regulations and provide organic waste collection services to all residents and businesses. SB 1383 allows for flexibility in the number and types of collection bins that businesses must utilize. Apartment communities with 5 or more units must participate in the local organics recycling collection service or self-haul organic waste to designated locations (if allowed by local ordinance). Landlords must provide notice to new residents within 14 days of occupancy of the premises about the local organics recycling program and an annual notice to educate residents thereafter. In order to enforce compliance, landlords should include lease language or an addendum regarding recycling requirements. There is additional information about these requirements on the California government website SB 1383 Education and Outreach Resources. Education and outreach materials must be translated in those areas with a substantial number of non-English speaking residents.

Health and Safety Code 26148 – Mold Disclosures – By January 1, 2022, residential landlords shall provide written disclosure to prospective tenants of the potential health risks and impact of the exposure to mold by distributing a mold booklet. The booklet shall be distributed prior to entering into a rental or lease agreement. The booklet is available on the California Department of Public Health website and is available in both English and Spanish.

AB 716 – **Court Access** – This law prohibits a court from excluding the public from physical access to the courts except where necessary to protect the health and safety of the public and court personnel. Even in those limited circumstances, the courts must provide at minimum, a public audio stream or telephonic conference for the general public to listen to court proceedings. This law does not apply in limited court proceedings where law required the proceedings to be closed.

Affordable Housing Laws and Trends

AB 491 – Equal Access Affordable and Market Units – AB 491 requires that mixed use properties (properties with affordable and market rate units) provide the same access to common entrances, common areas, and amenities of the building. It will also prohibit the practice of segregating affordable units to a specific area or floor of the property. These practices were already violations of fair housing law.

HUD Interim Rule – Known as the Extension of Time Required Disclosures for Notification of Nonpayment of Rent, this interim rule permits the Secretary of the Department of HUD to declare an extension of time for nonpayment cases where federal funding is available. The extension of time is a minimum of thirty days and requires certain information contained in the notice.

Fair Housing Laws and Trends

AB 468 – Emotional Support Animals (ESA) – AB 468 places additional restrictions on those selling ESAs and health care practitioners that provide verification regarding the need for an ESA. It does not otherwise change the rules associated with verification of disability and disability-related need for an ESA, however. AB 468 requires a person or business that sells or provides a dog for use as an ESA to provide a disclaimer to the buyer or recipient of the dog stating that the dog does not have the special training required to qualify as a guide, signal, or service dog and is not entitled to the rights and privileges accorded by law to those animals, and that representing oneself to be the owner or trainer of any canine identified as a guide, signal, or service dog is a misdemeanor. It further requires a person or business that sells or provides a certificate, ID tag, vest, leash, or harness for an ESA to provide a written notice to the buyer or recipient.

AB 468 also prohibits a health care practitioner from providing documentation relating to an individual's need for an emotional support dog unless the health care practitioner complies with specified requirements, including holding a valid license, establishing a client-provider relationship with the individual for at least 30 days prior to providing the documentation, and completing a clinical evaluation of the individual regarding the need for an ESA. The law specifically states that it should not be construed to restrict or change existing federal and state law related to a person's rights for reasonable accommodations and equal access to housing.

2022 Fair Housing Regulations – There were several amendments proposed to the California fair housing regulations. There are also seminars on the new regulations provided by the DFEH set for late January and early February - more information is available in the DFEH Outreach Newsletter. These regulations will be addressed in more depth in a follow-up article from our Fair Housing Department. A brief discussion of these topics includes changes and clarifications on reasonable modifications; intentional discrimination; discriminatory notices, statements, and advertisements; considerations of income (for source of income discrimination concerns); and residential real estate-related practices.

Criminal Background Checks – The California Court of Appeals recently ruled in *All of Us or None v. Hamrick* that an individual's date of birth and/or a driver's license number cannot be used to identify individuals in an electronic search of the criminal court records. In the Hamrick case, the court found that allowing searches of criminal records based on birth date or driver's license number was a violation of the California Rules of Court and as a result, the Riverside Superior Court was ordered to remove those identifiers as a means to search an individual's criminal history. The court's ruling applies to all jurisdictions in California and has led to a delay in the ability to perform criminal background checks in a timely manner. Based on the continuing trend in California (and nationally) to limit the ability to use criminal history as part of the application process for employment and housing, the current delay due to the Hamrick ruling may not be short-lived and in fact landlords and employers will likely see additional restrictions on the use of criminal history in the future. As a reminder, California's Fair Employment and Housing Council enacted regulations in 2020 creating new rules regarding the use of criminal history that landlords need to be aware of if inquiring about criminal history on a rental application or if screening for criminal history.

Yim v. City of Seattle – This case is currently on appeal in the Ninth Circuit and is a challenge to a Seattle "Fair Chance" ordinance which prohibits the use of criminal background checks by private landlords. Three landlords and a rental housing trade association filed suit against the City of Seattle to challenge the ordinance on grounds that it is unconstitutional because it

violates substantive due process and free speech rights. The district court disagreed, stating that only commercial speech was being regulated and that the ordinance advanced a legitimate, substantial interest of the city (i.e., reducing barriers to housing and racial discrimination in housing). Several professional trade groups filed an amicus brief in support of the Plaintiffs, arguing that the ordinance should be overturned because criminal background checks play an important role in ensuring public safety, the ordinance violates the First Amendment and is preempted by federal law (the Fair Credit Reporting Act).

Website Accessibility – We have seen a substantial number of demand letters, and even some lawsuits based on an alleged denial of website accessibility. If you do business with the public through a website, you want to make sure that your website is accessible to the disabled. California businesses can even be sued by someone out of state. The Americans with Disabilities Act requires that public accommodations be accessible to the disabled in order to allow for "full and equal enjoyment" of the related goods or services. The owner of any business is responsible for making sure those accommodations are accessible. A failure to provide access to the disabled can result in a finding that a business is engaging in unlawful discrimination.

Web Content Accessibility Guidelines 2.0 (WCAG) are technical guidelines developed by the Worldwide Web Consortium (W3C) with the goal of providing a single shared standard for web content accessibility that meets the needs of individuals, organizations, and governments internationally. The more that your website meets WCAG standards the more likely it is to satisfy the requirements of the ADA.

If you have a business website which the public can access, we recommend you check with your website developer or vendor to confirm that the level of accessibility for the disabled on your website meets your expectations.

Applicant Screening and Investigative Consumer Reports (ICRAA) – The Investigative Consumer Reporting Agencies Act, or ICRAA, requires a landlord to, among other things, disclose to a rental housing applicant in writing that an investigative consumer report (a report containing information about the consumer's character, general reputation, personal characteristics, and mode of living) will be made. A landlord must provide the reporting agency's name and contact information as well as provide a checkbox that the applicant can check to receive a copy of the report. Although this is not a new requirement, there has recently been an increase in lawsuits against landlords for violations of ICRAA.

As a reminder, landlords that screen exclusively for credit and not for information regarding a consumer's character, general reputation, personal characteristics, and mode of living are required to comply with the Consumer Credit Reporting Agencies Act (CCRAA) and the rules relating to the required notices associated with the denial and/or conditional denial of a rental applicant, also known as adverse action notices. In addition to the California rules relating to tenant screening, landlords should be aware of the federal rules that may apply under the Fair Credit and Reporting Act (FCRA). Landlords should ensure their rental applications and screening policies comply with the law to avoid liability.

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 Whitney Heys at 800-574-5587 or whitney.heys@kts-law.com if you are interested in a review.

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