

BORNSTEIN LAW

Anti-price gouging laws that regulate the price of rental housing when emergency declarations are in place

Summary:

Rental housing providers are already constrained by how much they can raise the rent through state and local rules, but there is an added dimension of laws that prohibit exorbitant rent hikes during natural or manmade disasters.

Since California is in a perpetual state of emergency, housing providers should familiarize themselves with rules relating to rent increases whenever calamity strikes.



Have situational awareness on emergencies in your locale.

Discussion

California Penal Code Section 396 is a state law that prohibits price gouging during a state of emergency in order to ensure that Californians are not victimized twice by being preyed upon by opportunistic merchants and service providers looking to profit from someone's misfortune.

Specifically, the law makes it illegal for rental housing providers, among other sectors, to raise prices by more than 10% above pre-emergency levels. The ceiling on how much rents can be raised not only apply to existing tenants, but to rent increases at unit turnover.

This law is consequential because California is in a perpetual state of emergency, whether the declared emergency relates to rental housing demand or not.

The Penal Code has been criticized because a heat wave, a citrus tree infection, or an oil spill in the Pacific Ocean, for example, has no nexus to housing but nonetheless trigger the anti price-gouging ban.

Another grievance is the difficulty in ascertaining exactly where there is a state of emergency and what the expiration date is. This is confusing because emergency declarations are so profuse and commonly, several declarations are issued at once.

Adding to the mayhem, cities and counties can declare their own emergencies. While a crisis is normally proclaimed by the Governor, be sure to check with local governments whether any emergency is in effect or better yet, reach out to Bornstein Law.

Attempts to reform Penal Code Section 396 have failed for the time being, but we have said in many venues that while we may not like the law, we have to comply with it.



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Californians have remained resilient as they recover from the devastating series of storms battering our communities... As the state continues to work around the clock to expand relief, I want to remind businesses that price gouging during a state of emergency is illegal.

In concert with other state and local agencies, the California Attorney General's office has taken a strong stance against price gouging, and while most of the matters we handle at Bornstein Law are civil in nature, we remind our community that we are now venturing into criminal law to the extent that a violation is a misdemeanor punishable by up to a year imprisonment and/or a fine of up to \$10,000, among other potential civil enforcements.

It's important to note that anti-price gouging rules do not end at county lines. An easy example: Residents sadly lose their homes in a fire-ravaged area and have to travel to another city or county to find alternative housing. The landlord in that neighboring, unaffected area cannot engage in a precipitous rent hike in order to take advantage of the increased demand.

Anti-price gouging laws also make no exemptions based on the number of rental units or whether the structure is a single-family home. It applies to all rental units with an initial lease term of one year or less.

Against that backdrop, let's delve into the law given some "what ifs."

The unit is tenant-occupied at the time of the emergency declaration

For a tenant already in place when an emergency is declared, the base rent is simply the rental price which is paid. If the tenant is paying \$1,000 per month in rent, landlords can only increase the rent by \$100, for total monthly rent of \$1,100.

Where it gets more complicated is when the unit is vacant.

Rental unit has never been introduced into the rental market - it's never been advertised or made available for rent

We often see property owners who want to escape California and migrate elsewhere and rent out what used to be their primary residence. In this case, rents can be charged 160% of [Fair Market Rent established by HUD](#). However, if the unit is fully furnished, the owner can add another 5% to the rent.

That's right - properties that would ordinarily not be subject to rent controls will, in a state of emergency, be subject to government edicts that determine the amount of rent that can be charged.

Vacant properties that have been rented within one year prior to the emergency

If the unit has been rented at some point within the past year and disaster strikes, the law prescribes that the rent cannot be raised higher than the most recent rent.

For example, there is a tenant who is paying \$1,000 per month for an apartment in San Francisco and leaves in March. After putting up ads on Craigslist, the landlord finds a suitable rental candidate to move into the unit on April 1. The lease is signed on March 20th. The landlord charges the new tenant \$2,300 per month, but guess what?

Since the unit was rented out within the past year, it can be argued that the landlord must have kept the rent at \$1,100 (Most recent rental price that was offered prior to the declaration of emergency, plus a 10% increase).

Previously rented, became vacant, but the unit is subject to local rent control during the emergency declaration

When raising rents, in a rent-controlled jurisdiction, the base rent is calculated either by:

- Rent paid by the previous resident
- **OR**
- 160% of Fair Market Rent as established by HUD (whichever is greater).



Does the tenant know the dollar amount of the past rent, or are they even aware of price gouging laws and realize a state of emergency exists? Likely not.

Where we anticipate a problem is when a dispute arises in the rental relationship and a tenants' attorney is retained. The attorney will do as we routinely do - a forensic accounting of the tenancy and an improper rent increase will be found like a heat-seeking missile.



Emergency declarations were once associated with areas far away, but storm-related emergencies are hitting closer to home. Keep in mind that emergencies can and often do get extended.

County impacted	Originally issued	Status
San Francisco	March 8, 2023	Expires April 7, 2023
Alameda	March 28, 2023	Expires April 27, 2023
Santa Clara	March 8, 2023	Expires April 7, 2023



Has the owner recently renovated and wants to recoup costs by charging a higher rent?

Allowable rent increase can exceed 10% if it can be proved that the increase in price is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term.

Contact Bornstein Law about how to properly calculate and implement any rent increase of more than 10% pursuant to this exception.

**For informed advice, reach out to the firm
built for rental housing providers.**



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