

2017 REAL ESTATE LEGISLATIVE UPDATE: RENT CONTROL



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The Oregon legislature is back in session, and Oregon landlords are again a primary target for legislative reform. Last year, advocates for legislative intervention concerning the lack of affordable housing successfully repealed a 17-year-old statewide ban against inclusionary zoning. The prior statute prohibited zoning ordinances mandating affordable housing units as conditions to land use approvals and permits. The current law allows a mandate for affordable housing units for structures with 20 or more units and authorizes local governments to adopt a construction excise tax to further subsidize affordable housing. This year, the legislature is targeting the existing law that prohibits local governments from enacting rent control. The following is a summary of a selection of these bills currently pending before the legislature.

Rent Control

Speaker of the House Tina Kotek has introduced House Bill (HB) 2001. If enacted, it will create a moratorium on rent increases greater than five percent for residential leases. Higher rent increases may be permitted in some circumstances, such as if allowed under a local ordinance or in the case of an approved substantial renovation or for health and safety or habitability repairs. If a higher rent increase is allowed due to repair, the tenant would have the option to terminate the tenancy and receive three months' rent in relocation expenses from the landlord. Violation of these provisions subjects the landlord to liability for the tenant's attorney fees and the greater of five months' rent or the tenant's actual damages. The bill exempts landlords providing reduced rent to tenants under federal, state, or local governmental programs.

HB 2001 will likely be subject to proposed amendments as it moves through the legislative process. One issue with the proposed moratorium that will garner attention is the methodology for calculating rent increases. For example, will the final bill allow two or more rent increases of five percent within a given year? Additionally, the initial reaction of many landlords to this bill has been to increase rents now as a hedge against potential future restrictions on rent increases. However, the legislature might seek to include such raises within the scope of its obligations and civil penalties. Retroactive legislation and civil penalties are possible under the Oregon and United States Constitutions.

HB 2001 may also repeal ORS 91.225, which prohibits local ordinances regulating rent. This repeal will expressly permit cities or counties to adopt rent stabilization programs so long as those programs exempt owner-occupied duplexes and provide the landlord a process to increase rents in order to obtain "a fair rate of return. . . as determined by the city or county." Speaker Kotek has advocated that the ability to petition the regulating entity for rent increases distinguishes the proposed legislation from existing rent control provisions that are the subject of criticism from economists. Whether or not such a rent control program will result in more affordable housing remains to be determined.

Tenancy Termination

Several important bills have also been proposed affecting a landlord's ability to terminate tenancies. These restrictions on termination are intended to protect tenants from landlords who are attempting to avoid the rental increase restrictions created by HB 2001. These restrictions, if fully enacted, effectively end no-cause evictions, and they require a landlord to rent a unit to a tenant until the tenant desires to cease the tenancy.

HB 2004 prohibits landlords from terminating month-to-month tenancies without cause, subject to certain limited exceptions. Exceptions include conversion of the property to a non-residential use, demolition, uninhabitability, repair, or sale. Even if an exception applies, the landlord must give 90 days' notice and provide relocation expenses in the form of three months' rent and the return of any security deposit. Violation of the termination provisions subjects a landlord to liability for three months' rent and the tenant's actual damages. The bill would also mandate that a fixed-term tenancy becomes a month-to-month tenancy at its specified end date unless the tenant gives notice to renew or terminate. In the case of a fixed-term tenancy, the landlord would also be required to make a written offer to renew the tenancy for at least the same duration. HB 2004 would be effective immediately if enacted.

HB 2240 also prohibits landlords from terminating a month-to-month tenancy without cause. Unlike HB 2004, however, a landlord may give 90 days' notice of termination without cause, but must pay the tenant three months' rent in relocation expenses. HB 2240 also allows for termination subject to the same exceptions appearing in HB 2004, though under HB 2240 the landlord need not provide relocation assistance if an exception applies. This bill would also allow tenants to elect to renew their rental agreements at any time during the tenancy so long as the tenant has not received notice of termination from the landlord. Violation of the bill's provisions would subject a landlord to liability for three months' rent, actual damages, and the tenant's attorney fees. If enacted, the bill would be immediately effective and would apply to fixed term tenancies entered into or renewed after the bill's passage and existing month-to-month tenancies.

The session just started, and it is difficult to predict what legislation will be enacted and what the final product will be. We will continue to monitor these bills and others during the course of the session. If you have any questions or concerns, please contact one of our firm's real estate or litigation attorneys for advice.