Presents:

San Jose Tenant Rental Policies: Landlord and Tenant Rights and Responsibilities
Who are we?

Project Sentinel, Inc. is a non-profit housing services agency serving many communities in Northern California. Neutral Landlord /Tenant Counseling and Dispute Resolution is one our core services. This includes supporting some Cities with the administration of their rent stabilization hearing and petition processes.

Sandra DeLateur, Mediator and Arbitrator

Emily Hislop, Special Programs Manager

PLEASE NOTE: We are not able to offer legal advice or legal representation, but we can offer tips, best practices, and an overview of local and State laws. For legal services, please contact an attorney or a lawyer referral service.
AGENDA

1. Introduction
2. San Jose Rental Housing Laws (ARO/TPO) & AB 1482 (Tenant Protection Act)
3. Statewide Temporary Eviction Protections
4. Rent Relief Program
5. Small Landlord Mortgage Relief
San José ARO/TPO and State Rent Law (AB 1482)
Useful information and tools on City’s Housing website: sanjoseca.gov/your-government/departments/housing
San Jose ARO/TPO Introduction

• The Apartment Rent Ordinance (ARO) provides rent control to certain units within San Jose (*took effect September 7, 1979*)

• The Tenant Protection Ordinance (TPO) provides eviction protections (*took effect August 16, 2017*)

  ➢ ARO: rent control; all ARO units covered by TPO

  ➢ TPO: eviction protections; not all TPO units subject to ARO
Apartment Rent Ordinance (ARO)

- Applies to:
  - Apartment buildings with 3 or more units built before 1979
  - Guest houses built before 1979
  - Condo developments where 3 or more units are owned by 1 owner
  - Individual rents fully or partially paid by the government (e.g. Section 8)

- Does NOT apply to:
  - Single-family homes and condominiums
ARO Covered Properties
Annually register each rent stabilized unit
Pay fees
- May include fees for operating expenses
- Tenant pass-through not allowed
Each adult household member given a copy of registration
Exceptions to ARO 5% Rent Cap

• Fair rate of return (Rent Petition)
• Capital Improvements
• One time service payments
  • i.e. parking spaces, pets
• Voucher holders (e.g. Section 8)
Both San Jose and State law prohibit discrimination based on source of income (e.g. housing vouchers). Prohibited activities include:

- Advertising that housing vouchers are not accepted
- Assessing an applicant's ability to pay based on an amount greater than the portion of rent to be paid by the applicant
- Imposing rental terms on voucher holders that differ from terms for other rental applicants
San Jose Rent Increase Moratorium

• Rent increases on covered units cannot be charged between February 2, 2021 and June 30, 2021 to tenants who have submitted a Declaration of COVID-19 Related Financial Distress*. Applies to:
  - Apartment buildings covered by the ARO
  - Rent-controlled mobile homes (MHRO)

• A prior moratorium was in effect between April 29, 2020 and December 31, 2020
  - No declaration of financial distress was required from the tenant
  - All rent increases taking effect on January 1, 2021 and February 1, 2021 may remain in place.

*An unsigned Declaration of COVID-19 Related Financial Distress form must be served with any Notice of Increase

For more info: https://www.sanjoseca.gov/your-government/departments-offices/housing/covid-19-resources/rent-increase-moratorium/frequently-asked-questions
Benefits to Landlords under the Rent Increase Moratorium Ordinance

1. ARO / MHRO landlords who voluntarily reduce rents during the period may increase rents back to the original rates at the end of Ordinance period or the agreement, whichever occurs first;

2. Late charges on FY 2020-2021 ARO registration fees are suspended through June 30, 2021;

3. Repair/maintenance permit fees for ARO landlords are waived through FY 2020-2021; and

4. Tenants are prohibited from making service-reduction claims for the closure of recreational common areas at ARO properties during the moratorium.
Tenant Protection Ordinance (TPO)

Requires that landlords have “just cause” to evict tenants. Cause *must* be included in notice.

- Just Cause = Legal Reason
  - At Fault causes
  - No Fault cause
TPO Covered Buildings

- Rent controlled units (built before 1979)
- Unpermitted units (i.e. converted garages)
- Guest rooms in any guesthouse
- Rental units in any multiple dwelling (3 or more units)
TPO Exempted Buildings

- Duplexes
- Single family homes and second units
- Hotels and Motels
- Government or subsidized rental units
TPO At Fault Causes

- Non-payment of rent
- Material or habitual violation of lease
- Substantial damage of unit
- Refusal to sign identical rent agreement
- Nuisance behavior
- Refusing lawful access to unit
- Unapproved holdover subtenant
- Criminal activity
TPO No Fault Causes

- Substantial rehabilitation of unit
- Ellis Act removal
- Owner move-in
- Order to vacate
- Vacating of unpermitted unit
TPO Termination Requirements

1. Reason for termination qualifies as a “just cause”

2. Landlord serves written notice of termination to tenant household with proper notice period
   - Cause for termination must be stated

3. Landlord files notice of termination with City of San José
   - Within 3 days of serving notice to tenant
Penalties for Non-Compliance

**Criminal Penalties**
- $500 misdemeanor for first offense
- $1000 for subsequent repeat offenses

**Civil Remedies**
- Civil proceedings for any damages experienced by tenants
- Injunctions and costs for damages and attorney fees
- Treble fees
- Civil penalties up to $2500 per violation, or $10,000 per violation + attorney fees
Tenant Buyouts under TPO

- Landlords may negotiate voluntary buyout agreements with tenants
- Separate petition is required
- Tenant rights:
  - Right to refuse
  - Right to rescind for up to 45 days
Reminder: Anti-Retaliation

- Prohibited actions for purposes of retaliation:
  - Threatening eviction
  - Pushing tenant to leave unit involuntarily
  - Serve notice of termination
  - Reduction in services
  - Increase rent
  - Report tenant to immigration authorities
CA Tenant Protection Act of 2019 (AB 1482)

Statewide rental housing legislation that went into effect January 1, 2020, to be in effect unit January 1, 2030. Two main components:

1. Rent Cap
2. Just Cause Protections
AB1482: Rent Cap

• 5% + cost of inflation (measured through CPI)
  ➢ for Santa Clara County the cap is currently 6%
• Maximum 2 rent increases per year (total cannot exceed cap within given year)
• Does not apply to:
  • Exempted types of properties
  • Properties covered by ARO
  • Properties younger than 15 years old
AB 1482: Just Cause Protections

• Landlord must have legally valid reason to terminate

  ➢ Applies once:
    ✔ Tenant(s) have all lived in unit for 12 months; OR
    ✔ At least one tenant has lived in unit for 24 months

  ➢ Does not apply to:
    ◯ Exempt units
    ◯ Units covered by TPO
    ◯ Where tenant(s) not lived in unit long enough
AB 1482: Units Exempt from Rent Cap

- Dormitories
- Government subsidized or below market rate (BMR) units
- Rent controlled properties, provided that local rent control is stricter
- Units less than 15 years old
- Single family homes or condominiums, provided they are not owned by corporate interests
- Duplex where owner has lived unit other than rental unit since beginning of the tenancy
• Hotels, motels, hostels (<30 days)
• Dormitories
• Care facilities, religious facilities, non-profit hospitals
• Government subsidized or BMR housing based on income level
• Units less than 15 years old
• Single family homes or condominiums (requires notice!)
• Lodgers
• Owner-occupied properties where:
  - Tenant resides in other unit of duplex
  - Tenants share bathroom and kitchen facilities with owner
  - No more than 2 tenants reside on single family property, ADUs included
• Units protected by TPO
AB1482: At Fault Causes

- Failure to pay rent
- Nuisance (as defined by CA state law)
- Damage to property
- Criminal activity on premises
- Using the unit for an unlawful purpose
- Refusal to allow lawful entry to landlord (e.g. repairs)

- Refusal to renew on same lease terms
- Breach of material lease term
- Lease violation re: subletting
- Employee termination from employee housing
- Failure to move out after giving notice of leaving

NOTE: Many causes require notice giving tenant opportunity to fix before lawful termination notice can be given.
AB 1482: No Fault Causes

- Owner move in (OMI)
- Ellis Act withdrawal
- Government orders to vacate
- Intent to demolish or substantially remodel unit (requires permits)
# TPO / AB 1482: Just Cause Comparison

<table>
<thead>
<tr>
<th><strong>“At Fault” Causes</strong></th>
<th>TPO</th>
<th>AB 1482</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-payment of rent</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Material Violation of Lease</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Substantial Damage</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Nuisance Behavior</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Refusing lawful access</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Unapproved Holdover Tenant</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Criminal activity</td>
<td>Y</td>
<td>Y (or unlawful)</td>
</tr>
<tr>
<td>Subletting violation</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td>Termination of Employment</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td>Failure to move out (after Tenant gave notice)</td>
<td>N</td>
<td>Y</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>*<em>“No Fault” Causes</em></th>
<th>TPO</th>
<th>AB 1482</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantial Rehabilitation</td>
<td>Y</td>
<td>Y (with permits)</td>
</tr>
<tr>
<td>Ellis Act Removal from market</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Owner Move-In</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Order to Vacate safety/health</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Vacating an unpermitted unit</td>
<td>Y</td>
<td>N</td>
</tr>
</tbody>
</table>

### *Relocation Assistance*

AB 1482: If “No Fault” cause, landlord must pay relocation assistance (1 month’s rent) within 15 days of serving the termination notice OR may waive last month’s rent in writing.

San José TPO Units: For “No Fault” causes, Tenants may be entitled greater relocation payments under the City’s relocation assistance ordinance. For more info: [https://www.sanjoseca.gov/your-government/departments/housing/renters-apartment-owners/apartment-rent-ordinance/tenant-protection-ordinance](https://www.sanjoseca.gov/your-government/departments/housing/renters-apartment-owners/apartment-rent-ordinance/tenant-protection-ordinance)
Statewide Rental Housing COVID-19 Laws
Statewide Eviction Protections

- Tenant Relief Act of 2020 (aka AB 3088) went into effect August 30, 2020 replaced City of San Jose and Santa Clara County eviction moratoria

- AB 3088 was extended and expanded by SB 91 January 29, 2021

- The State Legislature sought to keep people housed, avoid massive homelessness, and protect the public from Covid-19
Statewide COVID-19 Eviction Protections

• Unpaid rent between March 4, 2020 and June 30, 2021 of Tenants experiencing COVID-19 related financial hardship can NEVER be the basis of eviction IF:

  ➢ Tenant demonstrates such impact by signing and returning a Declaration of COVID-19 Related Financial Distress to their landlord* to receive this protection.

  ➢ If any of the unpaid rent is from September 1, 2020 and June 30, 2021, Tenants must make sure to pay at least 25% of the total rent due between September 1, 2020 and June 30, 2021.

*This declaration form is to be provided TO tenant BY landlord with any Notice to Pay
Landlord Responsibilities - Notices

Any Notice to Pay or Quit MUST:

1. be a 15-Day Notice;

2. contain specific information; **AND**

3. be served with a “Declaration of COVID-19-Related Financial Distress”

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**DECLARATION OF COVID-19-RELATED FINANCIAL DISTRESS**

Code of Civil Procedure Section 1179.02(d)

I am currently unable to pay my rent or other financial obligations under the lease in full because of one or more of the following:

2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.
3. Increased expenses directly related to health impacts of the COVID-19 pandemic.
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income.
5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.
6. Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of income and/or increased expenses.

Signed under penalty of perjury under the laws of the State of California.

Signature

Dated

For information about legal resources that may be available to you, visit [https://lawhelpca.org/](https://lawhelpca.org/)

For information, resources, and support visit [http://noevictionkey.com](http://noevictionkey.com) or by calling...
Statewide COVID-19 Eviction Protections

1. Protects all residential tenants, including mobile home tenants, regardless of immigration status or if there is a written lease.

2. Unpaid rent of protected Tenants is not forgiven!

3. Until June 30, 2021: Just Cause eviction protections are extended to ALL residential tenancies!
   - The protections are those causes included in AB 1482, with some further limitations.
   - Under the limited circumstances a tenancy termination is permissible, the legally-valid reason must be included in any Notice of Termination.
Important to Note....

4. Tenants with unpaid rent **must** take certain actions to be protected

5. Landlords **must** serve certain documents to comply with the law and reserve their rights

6. Tenants still **owe unpaid rent**. Collection actions may be filed in Small Claims Court, but only after August 1, 2021.

7. Landlords who refuse rent relief funds may be barred from recovering from the Tenant the amount of money they would have received.
1. No late fees can be charged
2. COVID Rent Debt cannot be used as a negative factor in screening tenant
3. COVID Rent Debt cannot be sold or assigned if Tenant would have qualified for rent relief (if not, not until July 1, 2021)
4. Rent payments must be applied to current month’s rent.
5. Cannot use current tenant’s security deposit to satisfy COVID rent debt.
6. Retaliation against Tenants with COVID Rent Debt is barred; could be subject to penalties.
COVID-19 Rent / Small Landlord Relief Programs
Who Qualifies and What is Covered?

- Impacted tenant households with incomes ≤ 80% of AMI
  - Priority to assist households with ≤ 50% AMI and households unemployed 90 days before applying

- Back and forward rent, utility payments and other housing expenses.
  - Priority to back rent

Santa Clara County Household of 4 income limits

50% AMI = $78,950         80% AMI = $112,150
State of California’s Rental Assistance program

- Can be accessed by both landlords and low-income residents
- Landlords may apply to receive 80% of qualifying tenant’s unpaid rent from April 1, 2020 - March 31, 2021 if they forgive the remaining unpaid rent for the covered period. Tenants must consent.
  - If landlord does not participate, a qualifying tenant can apply for relief valued at 25% of unpaid rent from the covered period.
- Subject to funding availability, qualified tenants can apply to receive 25% of future rent for April, May, and June of 2021.
- Voucher participants, like Section 8, may only obtain relief for the tenant’s portion of the rent under the lease.
Santa Clara County and City of San Jose Rent Relief Program

- City and County approved on March 23rd a hybrid rent relief program targeting community’s lowest income and most vulnerable residents (<30% AMI) expected launch after Mid-April

Deploying Rental Assistance in Santa Clara County

In Santa Clara County, the next round of federal rental assistance will be deployed through a Hybrid Program comprised of two complementary approaches:

- The State of California’s Rental Assistance program will have funding earmarked for our community that can be accessed by both landlords and low-income residents.
- The Santa Clara County Homelessness Prevention System will administer a rental assistance program designed specifically for our lowest-income residents.
Where to apply?
Landlords can apply on behalf of their tenants using the State’s Program portal visit www.housing.org/covid-19 for links, checklists, resources and other info.

Housingiskey.com or https://housing.ca.gov/
https://housing.ca.gov/
Am I Eligible?

Landlords with one or more eligible renters can apply to get reimbursed for 80% of each eligible renter’s unpaid rent between April 1, 2020, and March 31, 2021, if they agree to waive the remaining 20% of unpaid rent.

Requirements include:

1. All payments must be used to satisfy the renter’s unpaid rent for the period between April 1, 2020 and March 31, 2021
2. Renters must take steps to verify eligibility requirements and sign the application
3. Renter’s household income must be at or below 80% AMI

Before applying, you will need:

1. To verify ownership - Property Deed, Mortgage Note, Property Tax Statement or Copy of Property Insurance Statement
2. IRS W-9
3. Lease or rental agreement reflecting renter’s name, residence address, monthly rent due.
What to Expect – Log In / Registration

Welcome to the California COVID-19 Rent Relief Program

New users must first REGISTER their account before signing in to the portal.

Email Address
Password

Remember my email address

Sign In

Forgot your Password?
What to Expect – After submission

- Tenant will receive an email from California COVID-19 Rent Relief with “Neighborly Software” in the message that will ask them to register to complete the application.

**TIP:** If you apply, let your tenant(s) know that you have and for them to look for an email from California COVID-19 Rent Relief. *So they know it’s not spam or a fishing scam!*
What to Expect – After submission

PROCESS FLOW - Landlord Initiated

Landlord Process Flow
1. Confirms rental unit(s) address is in CA and within a participating jurisdiction
2. Account Creation
3. Collect Tenant Information [Can be for multiple tenants]
4. Collect Information on Rent Owed
5. Collect Bank Account Information
6. Collect Verification Documents
7. Agree to Program Terms
8. Landlord Signs

Tenant Process Flow
1. Notified Application has been submitted
2. Checks if already a registered user; if no, Account Creation
3. Collects Household Information [Income, Loss of Income]
4. Determines eligibility
5. Verify Information on Rent Owed
6. Determine Application Priority
7. Collect any missing information
8. Verifies identities, income, tenant residence, rent due
9. Tenant Signs
10. Application Complete
Small Landlord Relief (AB 3088 / SB 91)

Mortgage relief options available to Small Landlords who have had difficulty making mortgage payments due to COVID-19.

• A “Small Landlord” is:
  ▪ Owner of 4 or fewer properties; AND
  ▪ Each property has no more than 4 rental units
• Properties do not have to be owner-occupied
• COVID-19 impacted = at least one Tenant has not paid full rent.
Small Landlord Relief Workout Options

• **Forbearance:**
  ➢ Temporary suspension or reduction of the mortgage payment for a specific period of time.

• **Mortgage Modification:**
  ➢ Permanent change of one or more of the existing mortgage terms

• **Repayment Plan:**
  ➢ 6-12 month plan to repay the past due amount
What’s Coming:
The American Rescue Act

www.housing.org/housing-counseling   |  Project Sentinel
American Rescue Act

Homeowner Assistance Fund

Overview and FAQs

www.housing.org/housing-counseling | Project Sentinel
Eligibility

• Homeowners and renters experiencing a COVID-19 financial hardship that began after January 21, 2020

• If you have a mortgage, the new law limits mortgage-related assistance to homeowners with mortgages on their principal residence, including any 1-4 unit dwelling, with principal not exceeding the maximum allowed by Freddie Mac and Fannie Mae
Uses of HAF Funds: Property Owners

• The purpose of HAF is to prevent:
  • Homeowner mortgage delinquencies, defaults and foreclosures
  • Loss of utilities or home energy services
  • Homeowner displacement

• Qualifying expenses for HAF include:
  • Mortgage payment assistance;
  • Funds to help a homeowner reinstate a mortgage or to pay other housing related costs from a period of forbearance, delinquency or default
  • Principal reduction
  • Interest rate reductions
  • Utilities, internet service, property, flood or mortgage insurance
  • Homeowner association fees, condominium association fees, or common charges
Uses of HAF Funds: Renters

• The purpose of HAF is to prevent:
  • Rental delinquencies
  • Loss of utilities or home energy services
  • Renter Displacement

• Qualifying expenses for HAF include:
  • Rental payment assistance
  • Funds to help a renter reinstate a rent payment (80%) or to pay other housing related costs from a period of rental moratorium
  • Utilities, internet service, property, flood or mortgage insurance
www.housing.org/covid-19

Links to applications, checklists, resources and more!

COVID-19 Resources

We are here to assist with disputes over rent payments, evictions or any other housing issues during COVID-19 and beyond.
Other Information & Contacts

City of San Jose:  sanjoseca.gov/your-government/departments/housing

Landlord ARO/TPO Questions: Project Sentinel, (408) 414-5359

HUD Housing Counseling: Project Sentinel, (408) 470-3730

Tenant Questions: Bay Area Legal Aid, (800) 551-5554