

CITY OF NAPA
INTER-OFFICE MEMORANDUM

TO: DON SEHORN, HOUSING PROGRAM COORDINATOR

FROM: THOMAS B. BROWN, CITY ATTORNEY
BY: DAVID C. JONES, DEPUTY CITY ATTORNEY

DATE: AUGUST 8, 2000

RE: APPLICABILITY OF SENATE BILL 1098 IN NON-RENT CONTROL JURISDICTION

This memorandum is in response to your June 29, 2000 inquiry to Tom Brown regarding the applicability of certain terms of Senate Bill 1098 to the Housing Authority of the City of Napa, a copy of which is attached. (City Attorney Log No. 00-195.)

ISSUE:

Whether the 90-day moratorium on a landlord raising rent under certain conditions, which was codified last year at Civil Code Section 1954.535, applies within a non-rent control jurisdiction such as the City of Napa.

CONCLUSION:

Yes. The 90-day written notice and moratorium on rent hikes set forth in Section 1954.535 applies to landlords within the City of Napa.

DISCUSSION:

Senate Bill 1098, which became law in October of last year, amends Civil Code Section 1954.53 and adds Section 1954.535 to the Civil Code. Your question appears to be directed only at the applicability of that portion of the bill ultimately codified as Section 1054.535, which provides as follows:

Where an owner terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for rent limitations to a qualified tenant, the tenant or tenants who were the beneficiaries of the contract or recorded agreement shall be given at least 90 days' written notice of the effective date of the termination and shall not be obligated to pay more than the tenant's portion of the rent, as calculated under the contract or recorded agreement to be terminated,

for 90 days following receipt of the notice of termination of non-renewal of the contract.

That law applies in a non-rent control jurisdiction such as the City of Napa for the following reasons: First, it does not, on its face, limit its applicability to rent control jurisdictions, although other portions of SB 1098 expressly include such limitations. Second, and more important, another portion of SB 1098, ultimately codified as Section 1054.53(a)(1)(A), is expressly aimed at the same situation, but in rent control jurisdictions. It provides that following the same termination or failure to renew contemplated above, the rent must remain the same for *three years*. The section provides that

In a jurisdiction that controls by ordinance or charter provision the rental rate for a dwelling or unit, an owner who terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant shall not be eligible to set an initial rent for three years following the date of the termination or non-renewal of the contract or agreement. For any new tenancy established during the three-year period, the rental rate for a new tenancy established in that vacated dwelling or unit shall be at the same rate as the rent under the terminated or non-renewed contract or recorded agreement with a governmental agency that provided for a rent limitation to a qualified tenant, plus any increases authorized after the termination or cancellation of the contract or recorded agreement.

Finally, the legislative history materials you provided state that the purpose behind the 90-day “freeze” is to allow a Section 8 tenant a greater amount of time to locate new housing following termination or failure to renew the Section 8 agreement. This rationale is equally applicable in rent controlled and non-rent controlled jurisdictions, and the materials neither state nor suggest any dichotomy.

Thus, the Legislature has exhibited the ability to distinguish between landlords in general and those in jurisdictions which control rents “by ordinance or charter provision.” As to the latter, the Legislature has added the three-year rent “freeze.” The 90-day notice and moratorium of Civil Code Section 1954.535 is not limited to jurisdictions which control rents “by ordinance or charter provision” and, thus, applies to any jurisdiction, including the City of Napa.

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