



San Jose's Rent Control Law – Tenant Buyout Agreements

On November 28, 2017, the San Jose City Council voted to replace the City's nearly forty-year-old rent control law with a new rent control ordinance. The revised Apartment Rent Ordinance (ARO) took effect on December 29, 2017. The ARO retained the 5% annual rent increase previously permitted, but also adopted many new requirements, including a new registry of rent-controlled units. One aspect of the ARO is the "Tenant Buyout Agreement" which permits landlords to obtain a voluntary vacancy in a rent-controlled unit by entering into a tenant buyout agreement. This Industry Insight provides an overview of the requirements and components of the tenant buyout agreement under the terms of the ARO.

For additional information on the ARO's applicability and requirements, please see CAA's [Industry Insight – San Jose's Rent Control Ordinance – The Apartment Rent Ordinance](#).

I. ARO'S LIMITED APPLICATION TO INITIAL RENT

The ARO limits rental increases on rent-controlled rental properties to five percent (5%) of the monthly rent charged for the previous twelve months. The ARO only limits the rent which can be charged at initial occupancy (i.e., occupation of a previously vacant unit), however, in certain limited circumstances. This policy, known as "vacancy de-control," is in place because of a state law known as the Costa-Hawkins Rental Housing Act. The Costa-Hawkins Rental Housing Act limits local governments' ability to impose the strictest forms of rent control. More information can be found in CAA's [Industry Insight – Costa-Hawkins Rental Housing Act](#).

So long as the prior tenancy ended because either: (1) the residents voluntarily vacated, or (2) the tenancy was legally terminated as a result of the resident's actions (such as non-payment of rent, breach of the lease, or nuisance), the landlord may set the initial rent for the next tenancy at an amount of their choosing without any restriction imposed by the ARO.

If the prior tenancy was terminated for any other reason (i.e., a "no fault" reason) or through unlawful landlord activity, the landlord is not permitted to raise the rent to market for the new residents. Instead, the landlord must continue to comply with the provisions of the ARO regulating rent increases.

II. TENANT BUYOUT AGREEMENT

The ARO permits landlords to obtain a voluntary vacancy in a rent-controlled unit by entering into a tenant buyout agreement, subject to the terms of the ARO. Compliance with the tenant buyout provisions takes place in three stages: (1) the offer, (2) the agreement, and (3) the resident's right to rescind the agreement. The requirements applicable to each of these stages are discussed below. The provisions applicable to a tenant buyout agreement are not applicable to settlement agreements made as part of a pending unlawful detainer action.

Because of the strict rules applicable to the process of negotiating, preparing, and enforcing a buyout agreement, CAA recommends having an experienced attorney handle all buyout negotiations and agreement preparation.



A. The Buyout Offer

Immediately prior to making a buyout offer¹ to a resident, the landlord must provide the resident with a disclosure form prepared by the City, that form is available [here](#) at the link titled “Tenant Buyout Agreement” in English and Spanish. The disclosure form informs the resident about information such as the application of the ARO and Tenant Protection Ordinance, the resident’s right to request a copy of any buyout agreement translated into their primary language, the resident’s right to not enter into a Buyout Agreement, the resident’s right to seek the assistance of an attorney, the resident’s right to rescind the agreement within forty-five (45) days, a statement explaining that exercising the right to rescind after vacating the unit, will not entitle the resident to move back into the unit, and the resident’s right to relocation assistance payments if they are evicted for specified reasons. Both the landlord and resident should sign the City disclosure form, and the landlord should retain a copy of the signed form for their files. Failure to provide the disclosure form is a basis for the resident to rescind the buyout agreement (discussed in more detail below).

B. The Buyout Agreement

The ARO does not regulate the material terms of the buyout agreement (i.e., the amount paid or time period for the resident to move-out), but it does require that the buyout agreement meet certain requirements and include some specific provisions. The buyout agreement must be in writing and must be signed by the landlord and all residents. The landlord must provide a copy of the buyout agreement translated into the resident’s primary language, if requested by the tenant. The buyout agreement must also include the following statement in at least 12-point font:

1. You have the right to not to enter into this Buyout Agreement
2. You may choose to speak with an attorney before signing this agreement
3. You may also contact the City Housing Department prior to signing this agreement.
4. You have the right to cancel any Buyout Agreement within forty-five (45) days from the date of signing this Buyout Agreement without penalty. To cancel this agreement, you must send, via U.S. mail, the Landlord a signed and dated notice indicating that you are cancelling the agreement, or words to that effect. However, if you have already moved out, cancelling this Buyout agreement will not entitle you to move back in.

After the buyout agreement has been signed by all parties, the landlord must provide all residents who signed the agreement with a copy of the signed agreement. In addition, the landlord is responsible for filing a copy of the agreement, as well as the fully executed City disclosure form, with the City within thirty (30) days of when the agreement is signed.

C. Resident’s Right to Rescind the Buyout Agreement

The ARO allows the resident to rescind (i.e., cancel) a signed buyout agreement without penalty within forty-five (45) days of when the agreement is signed. This right to rescind the agreement is only available to residents and applies even though the landlord complied with all of the requirements for buyout agreements. In addition, the resident also has the right to rescind the agreement after the forty-five (45) day period if any of the following apply: (1) the landlord failed to provide the buyout disclosure form before making the buyout offer, (2) the buyout agreement did not comply with the ARO’s requirements (outlined in section B immediately above), or (3) there is a basis under state or federal law to rescind the contract (for example, if the agreement was the product of duress).

All rescissions must be mailed to the landlord and must include a statement that the resident has rescinded the buyout agreement. Successfully rescinding a buyout agreement, does not entitle the resident to displace a

¹ Buyout offer is defined in the City’s regulations as “a Landlord’s offer to a Tenant to provide consideration in exchange for the Tenant’s agreement to voluntarily vacate the Rent Stabilized Unit.”



a subsequent resident or existing resident in the affected unit.

