



June 11, 2020

The Honorable David Chiu
California State Assembly
State Capitol, Room 4112
Sacramento, CA 95814

RE: AB 1436 (Chiu) – Rental Payment Default: State of Emergency – Oppose

Dear Assembly Member Chiu:

On behalf of the members of the California Apartment Association, I am writing to inform you that the organization has taken an oppose position on AB 1436, your bill that will prohibit a rental property owner from collecting unpaid rent for an indefinite and likely multi-year period.

Recognizing that we are in unprecedented times, CAA understands that tenants who have been truly affected by the COVID-19 virus – and the government response to it - need protections. In fact, they have already been granted extensive protections under federal law, state executive orders, judicial rules, and local laws, not to mention the countless number of owners who have deferred and reduced rent to help their tenants without a legal requirement to do so. AB 1436, however, is a one-sided, unreasonable, and unconstitutional proposal that will devastate the rental housing industry. It is not a fair and balanced approach for rental property owners and tenants in these unprecedented times. **The bill does not provide for - nor is it tied to - any funding to help tenants and landlords with the unpaid rent.** There is no way many rental property owners will be able to keep their buildings from foreclosure if AB 1436 were to become law. Here's why:

Under AB 1436, Rental Property Owners Will Go Years With No Rent Payments

Because AB 1436 is linked to state and local emergency proclamations, there is no definitive time that an owner – residential or commercial – can expect to receive any unpaid rent. Historically, both the state and local governments have gone **years** without lifting their declared states of emergency. Under Government Code Section 8629, an emergency proclamation does not end until terminated by the Governor, and it is typically years before those proclamations are terminated. This is evidenced by Governor Newsom's December 29, 2019, Proclamation Terminating States of Emergency that brought to an end more than 60 emergency proclamations, some dating back to 2011.ⁱ Local governments also regularly continue their local emergencies for years at a time; in Los Angeles, for example, the County Board of Supervisors has continued local emergencies dating as far back as 1990.ⁱⁱ

Tying AB 1436 to local emergency proclamations will equate to years without rent payments. With no rent payments to cover the mortgage and other expenses at the property, including employee salaries, there is no question that rental property owners will lose their single-family rentals and multifamily buildings to foreclosure. In many cases, the rent payments are an owner's only source of income.

AB 1436 Substantially Impairs Existing Contracts and Takes Property without Compensation in Violation of the State and Federal Constitutions – The bill negates existing contractual rental payment obligations on the part of the tenant and only allows the owner to collect back rent if the owner can persuade the tenant to sign an agreement to pay the back rent. Any allegation from tenants that they felt “harassed or intimidated” to sign an agreement will invalidate that agreement. The bill provides no mandate that a tenant sign this agreement to pay the back rent and instead provides every incentive for a tenant to refuse to sign one. No signature from the tenant means the owner (1) can't collect the back rent, (2) can't terminate the tenancy for failure to pay, and (3) can't report the unpaid rent to a credit reporting agency. The bottom line is that tenants are not only protected from eviction, they are protected from any demand by the owner to pay rent that is owed. **This equates to free rent.**

The United States and California Constitutions prohibit governments from passing laws that impair the obligation of contracts.ⁱⁱⁱ A regulation is an impairment of contract if there is a substantial impairment and if the means chosen to implement the regulation is of a character inappropriate to its public purpose.^{iv} In this instance, a policy that provides free rent and endangers the ability of rental housing providers to keep their properties in good repair and pay their employees is not sufficiently tailored to serve the purpose of keeping residents housed.^v

Additionally, the United States and California Constitutions prohibit the taking of property without just compensation.^{vi} That just compensation requirement is designed to bar the government from “forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”^{vii}

AB 1436 transfers the COVID-19 burdens of tenants to the backs of rental housing providers and represents just the sort of action the taking clause was intended to prevent. The severability clause included in the bill, no doubt, anticipates these constitutional challenges. However, by that time, many landlords - up and down the state - will have lost their rental properties to foreclosure.

AB 1436 Requires No Proof of Tenant Hardship – Unfortunately, during this pandemic, some tenant organizations have irresponsibly urged all tenants to forego rent payments, even if those tenants have been unaffected financially by COVID-19 and can afford to pay. AB 1436 lends to this unethical action by allowing tenants to withhold rent with no proof of a hardship or inability to pay. We are already seeing this in our communities; as local governments pass

The Honorable David Chiu
California State Assembly
June 11, 2020
Page 3

ordinances allowing for delayed rent payments, tenants have begun to withhold the rent, some announcing “solidarity with other tenants,” despite the fact that they have also announced their ability to pay. AB 1436 is a government-sanctioned “rent strike.” It encourages tenants to go years without paying the rent and then allows them to walk away at the end with no payments to the owner and no way for the owner to collect the rent they are lawfully owed.

AB 1436 Invalidates Local Ordinance Payment Agreements – The bill provides that any agreement that conflicts with or purports to waive the provisions of this section is prohibited and is void as contrary to public policy. This would invalidate the payment plan agreements that landlords and tenants have entered into, which are consistent with the repayment requirements developed by local governments.

AB 1436 Limits the Use of Security Deposits – The bill limits the use of a security deposit by a property owner even if the tenant moves out. It will require the owner to return the deposit even though the tenant has seriously damaged the unit and/or owes months of back rent, further eliminating any chance that a landlord has to collect unpaid rent or other lawful charges due under the lease contract.

The California Apartment Association is the largest statewide rental housing trade association in the country, representing over 50,000 single-family and multifamily apartment owners and property managers who are responsible for over 2 million affordable and market-rate rental units throughout the State of California.

Sincerely,

CALIFORNIA APARTMENT ASSOCIATION



By
Debra Carlton
Executive Vice President
State Public Affairs & Compliance

ⁱ www.gov.ca.gov/2019/12/23/proclamation-terminating-states-of-emergency/

ⁱⁱ See Los Angeles County Bd. Of Supervisors, Agenda for 6/9/20, Item A, p. 45.

ⁱⁱⁱ U.S. Const. art. I, § 10, cl. 1; Cal. Const. art. I, § 9.

^{iv} *Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 244; see, e.g., *Ross v. Berkeley* (1987) 655 F.Supp. 820 (finding that a rent control ordinance severely impaired contractual obligations in an unreasonably overbroad manner ill-tailored to its objectives).

^v Unfortunately, this is not the first time governments have been called on to address an emergency that impacts the average person's ability to pay their bills. In the 1920s, the Supreme Court addressed a series of rent control laws in the wake of World War I. In all of these cases, the government was allowed to foreclose eviction by a holdover tenant, but the tenant was not exempt from the obligation to pay a reasonable rent. (See *Levy Leasing Co, Inc. v. Siegel* (1922) 258 U.S. 242; *Marcus Brown Holding Co. v. Feldman* (1921) 256 U.S. 170; *Block v. Hirsch* (1921) 256 U.S. 135.) In addition, during the Great Depression, the Court considered a state's mortgage moratorium law that allowed troubled homeowners to extend their mortgage payments through a court review process – even in that case, the homeowners still had to pay a reasonable rental value while the mortgage payments were extended. (*Home Building Assn. v. Blaisdell* (1934) 290 U.S. 398; see also *Wright v. Vinton Branch of Mountain Turs Bank* (1937) 300 U.S. 440.)

^{vi} U.S. Const., 5th Amendment (applicable to states through 14th Amendment); Cal. Const., rt. I, §19.

^{vii} *Pennell v. San Jose* (1988) 485 U.S. 1, 9.