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**CIVIL CODE - CIV**

**DIVISION 3. OBLIGATIONS [1427 - 3273.69]** ( *Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14. )*

**PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69]** ( *Part 4 enacted 1872. )*

**TITLE 5. HIRING [1925 - 1997.270]** ( *Title 5 enacted 1872. )*

**CHAPTER 2.6. Commercial Rental Control [1954.25 - 1954.31]** ( *Chapter 2.6 added by Stats. 1987, Ch. 824, Sec. 2. )*

**1954.25.** The Legislature finds that the price charged for commercial real property is a matter of statewide concern. Price controls on commercial rents discourage expansion of commercial development and entrepreneurial enterprise. These controls also discourage competition in the open market by giving artificial price benefits to one enterprise to the disadvantage of another. Because the impact of these controls goes beyond the local boundaries within which the controls are imposed, the adverse economic consequences become statewide.

In order to prevent this statewide economic drain from occurring, the Legislature hereby enacts a uniform system with respect to commercial rents, which shall apply to every local jurisdiction in the state. This legislative action is needed to prevent the imposition of artificial barriers on commercial rents, as well as to define those areas not included within the definition of commercial real property.

In making these findings and in enacting this chapter, the Legislature expressly declares its intent that this chapter shall not apply or be interpreted to apply to local rental controls on residential real property.

(*Added by Stats. 1987, Ch. 824, Sec. 2.*)

**1954.26.** As used in this chapter, the following terms have the following meanings:

- (a) "Owner" includes any person, acting as principal or through an agent, having the right to offer commercial real property for rent, and includes any predecessor in interest to the owner.
- (b) "Price" includes any charge or fee, however denominated, for the hiring of commercial real property and includes any security or deposit subject to Section 1950.7.
- (c) "Public entity" has the same meaning as defined in Section 811.2 of the Government Code.
- (d) "Commercial real property" includes any part, portion, or unit thereof, and any related facilities, space, or services, except the following:
  - (1) Any dwelling or dwelling unit subject to the provisions of Section 1940.
  - (2) Any accommodation in any residential hotel, as defined in Section 50519 of the Health and Safety Code, or comparable accommodations which are specifically regulated by a public entity in structures where 20 percent or more of the accommodations are occupied by persons as their primary residence.
  - (3) Any hotel unit not otherwise specified in paragraph (1) or (2) that is located in a structure with 20 or more units or in which 20 percent or more of the accommodations were occupied as of August 5, 1987, by persons as their primary residence, if, in either circumstance, the unit was subject to rental controls on August 5, 1987, provided that any control exercised thereafter is in accordance with the system of controls in effect on August 5, 1987.
  - (4) Any space or dwelling unit in any mobilehome park, as defined in Section 18214 of the Health and Safety Code.
- (e) "Rent" means to hire real property and includes a lease or sublease.
- (f) "Commercial rental control" includes any action of a public entity taken by statute, charter, ordinance, resolution, administrative regulation, or any other governmental enactment to establish, continue, implement, or enforce any control or system of controls, on the price at which, or the term for which, commercial real property may be offered for rent, or control or system of controls which

would select, mandate, dictate, or otherwise designate a specific tenant or specific person or entity with whom the owner must negotiate on the formation, extension, or renewal of a tenancy; or any other enactment which has such a purpose.

(g) "Tenant" includes a lessee, subtenant, and sublessee.

(h) "Term" means the period of time for which real property is rented or offered for rent, and includes any provision for a termination or extension of such a period or renewal thereof, except that nothing in this chapter supersedes the specific provisions of this code or of the Code of Civil Procedure which of themselves establish, prescribe, limit, or define the term for which real property may be rented.

(i) "Impasse notice" means a written notice which states either of the following:

(1) That the owner has not received from the tenant an offer of any terms for an extension or renewal of the lease which are acceptable to the owner, or an acceptance by the tenant of any offer of terms by the owner, and that an impasse with respect to any agreement on a lease extension or renewal has been reached.

(2) That the owner is not willing to extend or renew the lease.

(j) "Negotiation notice" means a written notice by a tenant in privity of estate, and in privity of contract with the owner, stating either of the following:

(1) That the tenant offers to extend or renew the lease on terms set forth in the notice.

(2) That the tenant solicits an offer for the extension or renewal of the lease from the owner.

(k) "Deliver" means to deliver by personal service or by placing a copy of the notice in the mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address for the receipt of notices under the lease.

(l) "Developer" means any person who enters into an agreement with a redevelopment agency for the purpose of developing specific commercial real property within a redevelopment project area with the intention of acquiring ownership of that property, even if that person does not own that property when the agreement is executed.

*(Added by Stats. 1987, Ch. 824, Sec. 2.)*

**1954.27.** (a) No public entity shall enact any measure constituting commercial rental control, nor shall any public entity enforce any commercial rental control, whether enacted prior to or on or after January 1, 1988.

(b) However, nothing in this chapter shall be construed to do any of the following:

(1) Relieve any party to a commercial lease or rental agreement of the duty to perform any obligation thereunder.

(2) Preclude express establishment in a commercial lease or rental agreement of the price at which real property may be offered to a subtenant or sublessee.

(3) Impair any obligation of any contract entered into prior to January 1, 1988.

(4) Affect any provision of, or requirement for mitigation of damages under, Sections 1951 to 1952.6, inclusive.

(5) Limit any adjustment of price required or permitted by law due to constructive eviction.

(6) Enlarge or diminish in any way any power which a public entity may have with respect to regulation of rental rates or the ownership, conveyance, or use of any property specified in paragraph (1), (2), or (3) of subdivision (d) of Section 1954.26.

(7) Relieve any party of any requirement or mandate to arbitrate, or deprive any party of any right to arbitrate or compel arbitration, which mandate or right exists pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, titled "Arbitration," Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, titled "Judicial Arbitration," Title 1 (commencing with Section 1823) of Part 3 of the Code of Civil Procedure, titled "Pilot Projects," or any other provision of state law.

(8) Affect in any way, or preclude the inclusion of, any provision in a lease creating any lawful option, right of first refusal, or any covenant to renew or extend the lease or sell the real property or any interest therein.

(9) Relieve any person of any duty or deprive any person of any right or cause of action which may exist pursuant to Section 51, 53, or 782.

*(Added by Stats. 1987, Ch. 824, Sec. 2.)*

**1954.28.** Nothing in this chapter limits or affects public entities with respect to any of the following:

- (a) The Eminent Domain Law, Title 7 (commencing with Section 1230.10) of Part 3 of the Code of Civil Procedure.
- (b) Abatement of nuisances. However, except as to conditions expressly defined as nuisances by statute, authority to abate or bring actions to abate nuisances shall not be used to circumvent the limitations of this chapter with respect to conditions not manifesting the quantum and character of unreasonableness and injuriousness to constitute a nuisance under law.
- (c) The Airport Approaches Zoning Law, Article 6.5 (commencing with Section 50485) of Chapter 2 of Part 1 of Division 1 of Title 5 of the Government Code.
- (d) Any contract or agreement by which an owner agrees with a public entity to offer any real property for rent at a stipulated or maximum price or under a specified formula for ascertaining a stipulated or maximum price, in consideration for a direct financial contribution; any written contract between a redevelopment agency and an owner or developer of commercial real property within a redevelopment project area; or any written development agreement entered into pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 of Title 7 of the Government Code. Any contract or agreement specified in this subdivision is not enforceable against an owner who became an owner (1) without actual knowledge of the contract or agreement, and (2) more than 30 days prior to the recording with the county recorder of a written memorandum of the contract or agreement specifically describing its terms and identifying the real property and the owner. The county recorder shall index these memorandums in the grantor-grantee index.
- (e) Article 2 (commencing with Section 5020) of Chapter 1 of Division 5 of the Public Resources Code, relating to historical resources.
- (f) The Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code.
- (g) Any contract or agreement entered into by a public entity relating to the transfer, lease, or license of commercial real property owned or leased by that public entity, except any requirement enacted pursuant to Section 1954.31.

*(Added by Stats. 1987, Ch. 824, Sec. 2.)*

**1954.29.** Nothing in this chapter shall, with respect to a public entity:

- (a) Grant, enlarge, or diminish any power (1) which it may possess under the provisions of, and for the purposes of, Division 1 (commencing with Section 65000) of Title 7 of the Government Code, (2) with respect to charter cities, planning, or zoning powers granted under Section 5 of Article XI of the California Constitution, or (3) any power which it may possess to mitigate the impact caused by the construction, reconstruction, demolition, or alteration of the size of any commercial real property. However, this subdivision does not apply to any actions taken for the clear or systematic purpose of circumventing this chapter.
- (b) Grant, repeal, enlarge, or diminish any authority to require a business license, whether for regulation or revenue.

*(Added by Stats. 1987, Ch. 824, Sec. 2.)*

**1954.30.** Nothing in this chapter grants or augments any authority of a public entity which it does not possess independent of this chapter, nor diminish any power of a public entity except as expressly provided in this chapter.

*(Added by Stats. 1987, Ch. 824, Sec. 2.)*

**1954.31.** A public entity may by enactment of a statute, charter or charter amendment, or ordinance, establish a requirement for notice relating to the termination of a lease of commercial real property due to the expiration of its term.

- (a) The enactment shall contain provisions dealing with any or all of the following:
  - (1) The delivery of a negotiation notice by a tenant.
  - (2) A requirement for an owner to deliver an impasse notice at any time after delivery of the negotiation notice, except that:
    - (A) The requirement shall be inapplicable unless the tenant has been required to deliver a negotiation notice not less than 270 days before the expiration of the lease, and has done so.
    - (B) The mandate for delivery of an impasse notice shall not occur earlier than 180 days before expiration of the lease.
    - (C) No impasse notice shall be required if the parties have executed a renewal or extension of the lease.
    - (D) Provision shall be made that the notice will include, in a form of type which will distinguish it from the body of the text of the balance of the notice, a disclosure reading, either:

(i) The giving of this notice does not necessarily preclude further dialogue or negotiation on an extension or renewal of the lease if the parties choose to negotiate, but the delivery of this notice discharges all obligations of \_\_\_\_ (the owner) under provisions of \_\_\_\_ (the enactment) and Section 1954.31 of the Civil Code; or

(ii) By giving this notice \_\_\_\_ (the owner) declares that he or she does not intend to negotiate further on any extension or renewal of the lease.

(3) Establish that a bad faith failure to comply with the enactment is subject to a remedy for actual damages.

(4) Any remedy under the enactment or Section 1954.31 shall be available only by an action brought by the owner or the tenant.

(b) The enactment shall contain (or shall be deemed to contain), a provision that:

(1) A tenant may not exercise any right pursuant to the enactment or this chapter, unless the tenant has performed the terms of the lease in such manner as would entitle the tenant to exercise any option he or she might possess under the lease.

(2) No right or cause of action accruing to a tenant pursuant to the enactment or this chapter, may be assigned other than to a person who is a lawful assignee of the lease, is in lawful possession of the premises under the lease, and is in compliance with paragraph (1).

(3) Nothing in the enactment or this chapter creates or imposes, nor shall be construed to create or impose, a duty to extend or renew, or to negotiate on an extension or renewal, of any lease; nor shall the delivery or receipt of any notice provided for by the enactment or by this chapter, constitute a waiver of any rights to continued performance under the covenants under the lease or to actions for possession.

(4) The delivery of any notice pursuant to the enactment or this chapter shall create a rebuttable presumption affecting the burden of proof, that the notice has been properly given.

(c) No enactment shall provide, or be deemed to provide:

(1) For any extension of the term of any lease without the mutual, written consent of the owner and the tenant.

(2) For any requirement on either party to offer to extend or renew or to negotiate an extension or renewal of the lease.

(3) Bar any action brought to recover possession whether by ejectment, unlawful detainer, or other lawful means.

(4) Any remedy under the enactment or this chapter, other than that which may be provided pursuant to paragraph (3) of subdivision (a).

(d) The provisions of any enactment adopted pursuant to this section shall not apply to:

(1) Any lease or rental agreement which is not in writing, which constitutes a tenancy at will, which is for a term of less than one year or for an unspecified term, which is a month-to-month tenancy or a tenancy at sufferance.

(2) Any lease, the term of which expires within 270 days after the effective date of the enactment.

*(Added by Stats. 1987, Ch. 824, Sec. 2.)*