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February 11, 2020

Honorable Tyler Diep
Room 4153, State Capitol

TENANT PROTECTION ACT OF 2019: HOUSING CHOICE VOUCHER PROGRAM - #1923504

Dear Mr. Diep:

Civil Code section 1946.2¹ generally prohibits an owner of residential real property from terminating a tenancy without “just cause,” and section 1947.12 prohibits an owner of residential real property from annually increasing the gross rental rate for that property by more than 5 percent plus the cost of inflation or 10 percent, whichever is lower. Sections 1946.2, subdivision (e)(9) and 1947.12, subdivision (d)(1) (hereafter sections 1946.2(e)(9) and 1947.12(d)(1)) both exempt from their prohibitions “[h]ousing ... subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.” Under the Housing Choice Voucher Program² (hereafter the HCV program), the federal Department of Housing and Urban Development (hereafter HUD) provides funding for rental subsidies to eligible families and project-based assistance at specific privately owned affordable housing communities.³ In this context, you have asked whether a rental unit participating in the HCV program qualifies for the exemptions under sections 1946.2(e)(9) and 1947.12(d)(1).

1. Background

1.1 Exemptions under sections 1946.2(e)(9) and 1947.12(d)(1)

Until January 1, 2030, section 1946.2 requires an owner of residential real property to show “just cause” to evict tenants with a tenancy of 12 months or more, and

¹ All further references are to the Civil Code unless otherwise indicated.

² 42 U.S.C. § 1437f.

³ 42 U.S.C § 1437f(b), (d)(2) & (o)(13).

section 1947.12 regulates how much an owner of residential real property can annually increase rental rates. Each of those sections contains an identical exemption applicable to the following two types of housing: (1) “[h]ousing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code,” and (2) housing that is “subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.”⁴

1.2 Overview of the HCV program

The federal government provides rental assistance to low-income, elderly, and disabled families through the HCV program. Under this program, HUD pays rental subsidies so eligible families can afford decent, safe, and sanitary housing.⁵ The program is generally administered by state or local governmental entities called public housing agencies (hereafter PHAs), and HUD provides housing assistance funds to PHAs.⁶ Assistance under the program may be either “project-based” or “tenant-based.”⁷ Under both types of assistance, the tenant contributes a prescribed portion of family income toward the rent due.⁸ The PHA pays the balance of the rent to the owner.⁹

1.2.1 Project-based assistance

In this first type of assistance, rental assistance is paid for families who live in specific housing developments or units, and the assistance is attached to a specific housing unit.¹⁰ Project-based assistance is available for both existing housing units and newly constructed or rehabilitated housing units.¹¹ With this type of assistance, a PHA enters into a housing assistance payment contract (hereafter HAP contract) with a property owner for units in existing housing or in newly constructed or rehabilitated housing,¹² and the property owner then receives assistance payments from the PHA for leasing units to eligible families.¹³ For project-based assistance, the PHA may select families who are participants in the PHA’s

⁴ §§ 1946.2(e)(9) & 1947.12(d)(1).

⁵ 24 C.F.R. § 982.1(a)(1).

⁶ 24 C.F.R. § 982.1(a)(1).

⁷ 24 C.F.R. § 982.1(b)(1).

⁸ 42 U.S.C. § 1437f(o)(2); see also 42 U.S.C. § 1437a(a)(1).

⁹ See 42 U.S.C. § 1437f(c); 24 C.F.R. § 983.5(a)(4).

¹⁰ 42 U.S.C. § 1437f(f)(6); 24 C.F.R. §§ 982.1(b)(1), 983.5(a)(1).

¹¹ 24 C.F.R. § 983.5(a)(2).

¹² 24 C.F.R. § 983.5(a)(2).

¹³ 42 U.S.C. § 1437f(c); 24 C.F.R. § 983.5(a)(4).

tenant-based voucher program and families who have applied for admission to the voucher program.¹⁴

1.2.2 Tenant-based assistance

The second type of assistance, tenant-based assistance, is attached to the tenant. To receive tenant-based assistance, the family selects a suitable unit.¹⁵ After approving the tenancy, the PHA enters into a HAP contract with the owner to make rental subsidy payments to the owner to subsidize occupancy by the family.¹⁶ The term of the HAP contract with the owner is the same as the term of the lease and covers a single unit and a specific assisted family.¹⁷ To be income eligible, the applicant must be a “low-income” family,¹⁸ which refers to a family whose income does not exceed 80 percent of the median income for the geographic area.¹⁹

2. Analysis

We now turn to the language of sections 1946.2(e)(9) and 1947.12(d)(1) to determine whether a rental unit participating in the HCV program qualifies for those exemptions. In construing a statute, a court begins by examining the statute’s words because they generally provide the most reliable indicator of legislative intent.²⁰ If the statutory language is clear and unambiguous, a court’s inquiry into the interpretation of the statute ends; in that case, the plain meaning of the statute is controlling, and it is unnecessary to resort to extrinsic sources in order to determine the Legislature’s intent.²¹

Sections 1946.2(e)(9) and 1947.12(d)(1) exempt from their provisions (1) housing restricted by deed, regulatory restriction contained in an agreement with a governmental agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Health and Safety Code section 50093; or, as relevant here, (2) housing subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Health and Safety Code section 50093 or comparable federal statutes. In the HCV program, as discussed above, HUD pays rental subsidies so eligible families can afford decent, safe, and sanitary housing.²² For both types of assistance, the PHA enters into a HAP

¹⁴ 24 C.F.R. § 983.251(a)(1).

¹⁵ 24 C.F.R. § 982.1(b)(2).

¹⁶ 24 C.F.R. § 982.1(b)(2).

¹⁷ 24 C.F.R. § 982.451(a)(2).

¹⁸ 42 U.S.C. § 1437a(a)(1); 24 C.F.R. § 982.201(b)(1).

¹⁹ 42 U.S.C. § 1437a(b)(2).

²⁰ *Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 634; hereafter *Lopez*.

²¹ *Lopez, supra*, 5 Cal.5th at p. 634.

²² 24 C.F.R. § 982.1(a)(1).

contract with the owner of the dwelling unit to make rental subsidy payments to the owner for leasing the unit to eligible low-income families, in order to subsidize occupancy by the family.²³ Because a rental unit participating in either the project-based voucher program or tenant-based voucher program is housing subject to a HAP contract entered into between a PHA and the owner of the rental unit to provide a rental subsidy payment to the owner in order to subsidize occupancy by eligible low-income families so those families can afford housing, it is our view that, under the plain meaning of sections 1946.2(e)(9) and 1947.12(d)(1), a rental unit participating in the HCV program would be “housing subject to an agreement that provides housing subsidies for affordable housing.” Thus, such a rental unit would be exempt from the “just cause” eviction requirement under section 1946.2 and the rental cap under section 1947.12.

3. Conclusion

Accordingly, it is our opinion that a rental unit participating in the HCV program qualifies for the exemptions under sections 1946.2(e)(9) and 1947.12(d)(1).

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel



By
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²³ 24 C.F.R. §§ 982.1(b)(2) & 983.5(a)(2), (4); see also 24 C.F.R. §§ 982.305(a), 982.451, 983.52 & 983.202.