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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

When A Tenant Leaves, So Does Rent Control

By **Chuck Slothower**

Law360 (September 2, 2022, 2:22 PM EDT) -- In California and Oregon, rent control laws prevent landlords from raising the rent on existing tenants by more than about 10% a year.

But when tenants leave, however, it's a different story. Landlords routinely raise rents by much more, real estate experts said.

Landlords in California can't raise rents for existing tenants by more than 10% a year, but they routinely raise them as aggressively as possible once tenants leave, experts say. (AP Photo/Rich Pedroncelli)

The limits on occupied units mean landlords tend to raise rents as aggressively as possible in vacant apartments while securing a new renter.

In an investor call earlier this year, Adam Wyll, president and chief operating officer of American Assets Trust, a major West Coast real estate investment trust based in San Diego, revealed that rent growth upon lease turnover was more than double that of occupied apartments.

"Regarding our multifamily portfolio in San Diego, we are seeing vacant units lease at an average of over 20% over prior rents with little to no concessions offered," Wyll said. "Note that renewal rates are capped just below 10% based on California laws. So we are maximizing the rental rates on vacant units to the full extent of our capabilities, all the while managing expenses."

Neither California nor Oregon's rent control laws place any limit on rent hikes once an apartment turns over. That often means new tenants can end up paying much more than the previous renter.

"Generally, if the unit is vacant, it's brought to market [rent levels] and the increase is much healthier than

10%," said Dean Zander, executive vice president for CBRE in Los Angeles.

Local regulations vary, as California allows cities to enact stricter rent control regimes, which has been done in Los Angeles, Berkeley and other municipalities. Rent caps are also tied to local consumer price increases, and in Oregon, the allowable rent hike cap is set statewide.

Nationally, rents grew by 16% during the first half of 2022, according to Freddie Mac. Rent growth is expected to remain robust, with high interest rates keeping would-be home buyers in apartments, all while a nationwide lack of multifamily supply is struggling to meet demand.

"In certain markets, the demand is so high, and there isn't any construction behind it," said Greg Frick, partner at HFO Investment Real Estate, a multifamily brokerage in Portland, Oregon.

Still, landlords can only raise rents to a level that the market will bear, Frick said.

"Owners can't randomly just pick where they're going to put their rents," he said. "There has to be demand behind it."

The rent caps in both California and Oregon are tied to inflation, so real estate experts in both states are forecasting that the caps will jump.

In California, rent increases are limited to 5% plus the regional consumer price index or 10%, whichever is lower, meaning increases cannot go beyond 10%. While in Oregon, where the allowable rent hike cap resets by Sept. 30 each year, rent hikes amount to 7% plus inflation, leading to a likely rent cap hike of about 15% this fall.

Economists generally frown on rent control, preferring instead to keep prices in check by increasing housing supply.

Christopher Thornberg, founding partner of Beacon Economics in Los Angeles, said rent control tends to reduce mobility.

"When you have rent control, what you do is you basically encourage people to live longer in their units than they would otherwise, particularly middle-income people," he said. "Our finding was in fact those middle-income people tend to displace lower-income renters in older housing."

Rent control does not apply to newly constructed apartment buildings in either state.

In Los Angeles, 49.3% of renters were spending 35% of their income or more on housing in 2020, according to the Census Bureau. In Portland, 40.7% were doing so.

A lack of reliable data is frustrating policymakers who are considering rental housing regulations. Even basic information such as rents, bedrooms, size and occupancy are tracked only by a patchwork of private providers.

Data on same-property rents is sparse. Unlike home sales, rents are not typically reported to local governments. Surveys by the Census Bureau and private real estate firms provide data on asking rents, but they often don't drill down to individual properties, making rents in any individual apartment difficult to track over time.

Some cities have made an effort to begin gathering more detailed rent data. Seattle's city council passed an ordinance in May that would have required landlords to submit detailed information on rental properties, including size, price and occupancy status. Seattle Mayor Bruce Harrell vetoed the measure on June 10, saying in his **veto letter** that the ordinance would be too costly to implement at an estimated $2 million to $5 million and was unlikely to yield reliable data.

He called instead on private real estate interests to provide key rental housing data. "While I do not agree with this legislation's approach," Harrell wrote, "I agree on the stated goal: we need reliable data."

--Editing by Steven Edelstone.