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landlord-tenant law in the western states

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Across the Western United States, major legislative changes are taking place regarding housing, and by extension the rights of landlords and tenants. As rents and the number of homeless individuals continues to grow across the western U.S., legislatures are passing measures to try and address the crisis. This paper will address some of the major legislative changes in six of the western states and their cities, both in terms of where the laws regarding tenant and landlord stand now, as well as proposed legislation that may change the landscape of residential real estate.

State	Total Adult Homeless	Per 100k	Total Student Homeless	% Couch Surfing (Doubled Up)
Arizona	10,007	137	24,399	63%
California	151,278	383	263,058	84%
Colorado	9,619	167	22,369	75%
Nevada	7,169	232	20,685	75%
Oregon	15,876	415	23,141	75%
Washington	21,577	283	40,112	74%

US Interagency Council on Homelessness, 2020

HOMELESSNESS

Homelessness continues to be a problem across the United States. Over half a million people in the United States are homeless on any given night (White House, 2019). The U.S. Department of Housing and Urban Development (HUD) conducts a yearly count of the homeless living on the streets. However, many advocates argue that the way the count is conducted results in an undercount of homeless individuals, as it fails to accurately capture people living in temporary housing (Boone, 2019). An example of this discrepancy is the difference between the HUD count, and the count the Department of Education conducts yearly on the number of homeless children in schools. The Department of Education count includes children that are living in temporary housing, such as couch surfing or living in motels or cars, and its findings suggest a much higher rate of homelessness beyond those living on the street (Boone, 2019). The assumption is that adults will find a way to keep their children off of the street through use of temporary housing methods. The graph below illustrates the results of 2020's homeless count from HUD and the Department of Education.

OREGON

In recent years Oregon has passed a number of laws focusing on landlord-tenant rights and responsibilities. 2020 has already become quite a notable year for Oregon housing law, as a number of recent bills, changes, and city ordinances have come into effect.

Rent control continues to be a divisive topic around the United States. Oregon recently passed Senate Bill 608 in February of 2019, the first state in the nation to pass a rent control bill. The bill prohibits landlords from raising rents more than 7%, plus the change in the consumer price index, in a year. Properties younger than 15 years old are exempt, as are those subsidized by the government. Strict penalties exist for breaches of the law, landlords must pay tenants up to 3 months of rent and damages. The city of Portland imposes additional rent limitations on top of the new State law. Under the city ordinance (30.01.085), landlords must give 90-days' notice for any increase in rent over 5%. Tenants may receive relocation assistance of up to \$4,500 from their landlord if their rent has increased over 10% (Oregon State Bar, 2020).

There is no maximum limit to what a landlord may charge for a screening fee in Oregon, however, a recent change to state law came into force at the start of 2020, amending ORS 90.295. The change created a more rigorous process for charging a tenant screening fee and makes it illegal to charge an applicant more than once, regardless of how many units the applicant applied for. The fee must be refunded if the unit is filled before screening the applicant, or if the applicant is not screened for any reason. Landlords are only allowed to charge the amount to cover the screening costs and must provide a receipt.

Portland took applicant screening a step further and passed the Fair Access In Renting (FAIR) ordinance which came into effect in March 2020. FAIR made changes to how landlords may consider tenant applicants, requiring landlords to wait 72 hours after posting a listing before considering tenants, and stipulates that applications must be prioritized in the order they were received. Landlords are prohibited from looking at criminal histories past a certain amount of time (3- 7 years) and cannot require monthly income more than 2x monthly rent. The ordinance does not apply to duplexes or accessory dwelling units, but does apply to low-income housing, which has many providers worried that the ordinance may place an extra burden on low-income people (Sorenson, 2020). FAIR also set limits on security deposits, in most cases reducing the amount of that can be charged to 1 or 1.5x monthly rent and accepting installment payments. Landlords are required to only use the deposit for repairs or replacements, must prepare itemized lists, and must repay the amount of the deposit not withheld within 31 days.

Discrimination law in Oregon was updated in 2016 to include sexual and gender identity as protected classes (Fair Housing Council of Oregon, 2016). Additionally, Oregon goes beyond Federal requirements to protect people from discrimination in housing due to their source of income (including Section 8 voucher recipients), marital status, service animals and mental handicaps (Home Forward, 2014).

With the occurrence of the Covid-19 pandemic, Oregon initiated a moratorium on residential evictions until the end of June 2020. Landlords may still file for evictions, though they are required to provide notice to the tenant of up to 30 days depending on the type of eviction. In Portland, no cause evictions under a year require 90 days' notice. Senate Bill 608 prohibits landlords from performing 'no cause' evictions if tenants have lived in the unit for longer than 1 year.

Homelessness and eviction are growing problems in Oregon, particularly in the Portland Metropolitan area (Griffith, 2019). HUD estimates that Portland is home to some 15,000 homeless people, about 12% of whom are young adults or family units, and about 5,000 of whom are chronically homeless (U.S. Interagency, 2020). The 2019 Point In Time Count identified a much lower number of homeless individuals, around 4,000, though credits this partially to the difficulty of tracking individuals with living arrangements other than the shelter or street. A relied-upon statistic in this area is the Department of Education's public school count, which tries to capture a more accurate picture of children's living situations. It is estimated in Oregon that some 23,000 students experience homelessness in 2019, 1,200 of whom are living in motels, while 17,000 were doubled up or 'couch surfing' (U.S. Interagency, 2020). The situation has led to a number of laws passing in 2019, including SB 608, as well as SB 5512, which set aside roughly \$50 million for Oregon to address the crisis. The 2020 Oregon Legislature has a number of proposed housing bills to address the crisis, including HB 4002 to fund a study into long term rental assistance programs, and HB 4001, which would allocate \$120 million into increasing emergency shelter capacity and building affordable homes (Oregon Housing Alliance, 2020). Oregon has also been seeking to meet additional housing need by passing bills such as HB 2001, which allows for duplexes in single family zoned areas.

WASHINGTON

Washington has been steadily changing its landlord-tenant laws over the past few years to address the State's housing crisis. Washington state law is in some regards remarkably different to its neighbor to the south, though on many counts it shares similar characteristics.

Housing discrimination law in Washington is very similar to Oregon's for example. Sexual orientation and gender identity as protected classes, as well as creed, marital & military/veteran status. Additionally, there are protected classes under city laws, including ancestry in Seattle & Tacoma, and political ideology in Seattle (Fair Housing Center of Washington, 2020). Washington has also passed laws prohibiting landlords from discriminating against Section 8 housing voucher recipients.

There are no maximum limits on what a landlord may charge for a security deposit, though the deposit must be returned 21 days after tenant moves out. Seattle requires the deposit to be paid back in full if no move-in checklist was filled out with the tenant. Washington law forbids landlords to charge a fee to have tenants placed on a waiting list. Recent legislative changes in 2020 to RCW 59.18.280 allows tenants to pay installments for deposits, nonrefundable fees, and the last month's rent. Installments are not required if the total amount for deposits and non-refundable fees does not exceed 25% of the first month's rent, and landlords that break the

law are liable for a one month rent plus attorney fees paid by the tenant. State law allows landlords to charge a screening fee that covers the exact amount of the cost of screening and tenants must be provided a receipt and acknowledge via a signed consent form. Move in fees are capped at up to 10% of the first month's rent. In 2018, Seattle passed the Fair Chance Housing Act which prohibits a landlord from considering criminal history by running criminal background checks during the screening process (Keshner, 2018).

Rent control is a hot topic in Washington, with the most recent legal development occurring in 2019 under HB 1440, requiring landlords to give 60 days notice of any rental increase greater than 10% in Seattle and Tacoma (Lloyd, 2019). Interestingly, under RCW 35.21.830, rent control has been illegal under state law since 1981, and therefore, no restrictions exist on how much landlords may raise the rent so long as they meet the new notice requirement (Tenants Union, 2020). Despite the Democratic super-majority in Washington's State Legislature, doubt has been expressed that the rent control restriction will be lifted any time soon (Bertolet, 2019). However, the state did pass a number of laws in 2019 such as HB 1406, which allows a portion of the state's sales tax to be used to fund housing programs, and SB 5334, which encourages condo building, in order to start addressing some of Washington's urgent housing needs. Rents in the Seattle area for example, have risen by 69% over the last 10 years, causing large number of evictions, and more than 23,000 people in the Seattle area to pay more than half their income in rent (City of Seattle, 2020).

Washington's eviction laws mandate that tenants receive 10-14 days' notice for breach of lease, and 14 days' notice for vacation of the property under SB 5600 (Tenants Union, 2020). State law allows for 'no cause' evictions, as a House bill designed to change this died last year. However, Washington has currently issued a moratorium on residential and commercial evictions due to Covid-19 until the beginning of June (Gabobe, 2020). Seattle law prohibits 'no cause' evictions and requires that landlords must provide tenants with housing relocation assistance if they are under 50% of the median income, or if their building is to be redeveloped (City of Seattle, 2020). Similar to the other west coast states, Washington State is facing a homeless crisis, with an estimated 21,000 people, and some 40,000 school age children experiencing homelessness (U.S. Inter-agency, 2020). To address the crisis, lawmakers passed a number of bills last year directing a portion of sales tax proceeds to fund affordable housing programs and has been focusing this year on expanding housing capacity (HB 2343) and relaxing rules around ADUs (HB 2630, SB 6617).

COLORADO

Colorado has not passed tenant-landlord laws as stringent as those in Oregon or Washington. However, the past two years has seen a number of bills pass to extend tenant rights, and to begin to address the number of homeless in the state. No form of rent control exists in Colorado though discussion is beginning to take place around the topic. The Colorado Supreme Court ruled in the early 2000s that it is illegal for cities to impose rent control under a 1981 State Law that bans rent control practices (Pankratz, 2000). In 2019, a bill to limit rents and repeal the state ban on rent controls was introduced in the Colorado Senate but failed to pass (Wingter, 2019). In Denver, 60 days' notice must be given on proposed rent increases.

Colorado recently passed the Rental Application Fairness Act (2019) which made several changes to the screening process for tenants. Landlords may only charge the cost of the screening, must provide a receipt, and are required to make a "good faith effort" to return any of the unspent fee money. The Act prohibits landlords from considering convictions older than five years (except for sexually related offences), allows them to review only the prior seven years of a tenant's credit history, and prevents them from considering non-conviction related arrests (Klazema, 2019). This legislation represents a significant change to housing law in Colorado, as there were previously no limits on what a landlord could charge to screen a tenant. Security deposits follow a similar vein, as there are no limits on what landlords may charge. Deposits must be returned within one month of a tenant moving out, and deductions are allowed for unpaid rent, damages, or unpaid bills (Eberlin, 2019). Colorado discrimination law closely mirrors that of Washington's. Sexual orientation, ancestry, creed, and marital status are all additional protected classes (Colorado Department of Regulatory Agencies, 2020). Unlike Washington and Oregon however, there are no protections for Section 8 housing voucher recipients.

Eviction in Colorado must be initiated through a court order and 'no cause' evictions are illegal. The Colorado legislature changed eviction law in 2019 under HB19-1118 which extended the notice of residential eviction for non-payment from 3 days to 10. A notable exception was for landlords who own 5 or less single-family homes, who may provide a shorter 5-day notice. HB19-1170 expanded the definition of a 'habitable' home in Colorado to include mold and broken appliances as determining whether a property is fit to abide in. A number of proposed bills for the 2020 legislative session seek to bring Colorado more in line with the other western states, including limiting the amount of late fees a landlord may charge (HB20-1141), the right for the tenant to appeal an eviction (HB20-2234), and the right for the court to suppress a tenant's eviction record from future scrutiny (HB20-1009). Colorado issued an eviction moratorium for 30 days at the end of April due to Covid-19 (Konnoth, 2020).

The homeless situation in Colorado has not been as drastic as that of other western states, though the 2019 count registered approximately 9,600 homeless individuals, and 22,000 homeless students (U.S. Interagency, 2020). Colorado law prohibits camping on the street, and the city of Denver enforces this through the sweeping of homeless encampments (McCormick, 2020). The Colorado legislature has started to address the homeless problem through a number of affordable housing bills. In 2019 the legislature increased the tax credit allocation for affordable housing (HB1228) to \$10 million and passed legislation (HB1322) to expand affordable housing by \$30 million per year through the acquisition, construction, and refurbishment of housing. The 2020 session is considering bill HB20-1035 to build a better statewide housing supportive service as well as a possible income tax credit for the Colorado Homeless Project (HB20-1335).

ARIZONA

Compared to the other states analyzed for this report, Arizona has not been as active in changing its existing housing laws.

Arizona state law prohibits discrimination based upon the classes identified under the Federal Fair Housing Act. Phoenix city laws protect additional classes which include including pregnancy, sexual orientation, domicile of a minor, and gender identity and expression (City of Phoenix, 2020). Arizona possess a similar stance to rent control as Colorado by specifically reserving rent control powers for the state and prohibiting cities from creating their solutions (A.R.S. § 33-1329). As a result, there is no form of rent control in Arizona. Additionally, there is no limit on what a landlord may charge for a screening fee, and landlords may consider evictions, credit ratings, and income in their screening process (City of Phoenix, 2020). Security deposit amounts are limited to 1.5x the monthly rent and must be returned 2 weeks after tenant moves with an itemized list included.

Arizona eviction law allows tenants between 5-10 days to cure their breach of the lease, and certain illegal acts performed by the tenant (homicide, prostitution) allow the landlord to end the lease immediately. Arizona requires residential landlords to ensure that the property is habitable for humans, including requiring that ventilation and air-conditioning are properly working. Landlords are prohibited from removing an essential service to the tenant to force them to act in a certain way, including shutting off the air conditioning. The tenant may pursue damages in such cases. Additionally, Arizona allows landlords to issue an unconditional 10 day right to quit in cases where a tenant has not provided information of prior criminal convictions during screening (Community Legal Service, 2020).

Recent legislative proposals such as HB 2115 have sought to create uniform renting standards across Arizona and have faced fierce debate between proponents for clearer legislation, and opponents who argue that such uniformity will not work in Arizona (Fischer, 2019). The bill has passed the Senate and the House, but as of the time of writing, has not been signed by the Governor. Arizona like many of the western states is also facing an affordable housing crisis, with homelessness increasing to around 10,000 individuals, as well as 24,000 school children (U.S. Interagency, 2020). Members of the state legislature introduced several bills to address the crisis, including creating a state tax credit for affordable housing, as well as expanding additional tax exemptions on low-income housing (Arizona Department of Housing, 2019).

NEVADA

Nevada law protects the additional classes of pregnancy, sexual orientation, domicile of a minor, ancestry, and gender identity/expression from discrimination (Clark County, 2020). The state currently has no form of rent control and possess a similar stance to rent control as Colorado and Arizona, namely reserving the power to pass rent control laws for the state rather than the cities. Last year, the Nevada legislature proposed and killed Senate Bill 398 that would have allowed cities to create their own rent control laws (DeHaven, 2019).

Nevada requires landlords to give 45 days' notice of any rent increase and stipulates that there is no limit on what a landlord may charge for a screening fee, though late fees are capped at 5% of the rent (N.R.S. Chapter 118A). Security deposits are limited to 3 months' rent and must be returned up to 30 days after the tenant moves out. Tenants may use a surety bond for the deposit, and landlords may only use the deposit for unpaid rent, damages, or a reasonable cleaning fee (O'Connell, 2020).

Nevada recently changed its eviction laws in 2019. Under SB 151, an eviction notice must be served by a professional (attorney, constable, or sheriff) and limits late fees charged to the tenant to no more than 5% of the monthly rent. Tenants now have 7 days to pay rent after being served notice, followed by a second 5-day notice to then vacate the property. No-cause evictions are legal in the state, however they require a 30-day notice. Landlord must allow tenants to access property up to 5 days after eviction to reclaim any property. Nevada law allows for summary evictions which can only be used when the issue is possession of the rental unit (NRS 40.253 & NRS 40.254). Summary evictions result in a hearing, and under Senate Bill 74 (2019), tenants now have the right to appeal. Requisites for a summary eviction are for tenants to be in 'Unlawful Detainer' of property, possessing it without a legal right to do so, and that the tenancy must have been legally terminated. Nevada has passed a moratorium on evictions for the length of the state of emergency due to Covid-19.

Nevada faces a similar affordable housing shortage as Arizona. The most recent count of homeless people in Nevada found approximately 7,100 adults were in some form of homelessness, as well as 20,000 students, 75% of whom were couch surfing (U.S. Interagency, 2020). It is estimated that Nevada has a shortage of more than 73,000 homes for low-income residents, though the legislature passed SB 448 last session to try and address this. Most affordable housing money in Nevada comes from HUD, and SB 448 created a \$10 million per year tax credit, the first new source of money for affordable housing since 1995 (Segall, 2019). Additionally, the Nevada congress passed SB 151 on evictions, and SB 103, which gives greater flexibility to Clark and Washoe counties to reduce or subsidize building permit fees to try and encourage affordable housing.

CALIFORNIA

In addition to federal housing discrimination law, California State law includes state protections under the Unruh Civil Rights Acts from discrimination against ancestry, citizenship/immigration status, primary language, age, mental & physical disability, sexual orientation, gender identity, genetic information, marital status, source of income (including Section 8), and military/veteran status (California Department of Fair Employment and Housing, 2020). California limits the amount of money that may be charged for a screening fee to a maximum of \$35. This maximum fee is updated annually based upon the consumer price index and must be refunded if not fully utilized. Landlords are prohibited from charging a fee if no unit is available. Recent passage of AB 110 now requires 90 days' notice before a landlord may increase the rent more than 10%. Up to 60 days' notice are required for evictions in California (California Courts, 2020).

Security deposits in the state are limited to 2x monthly rent if unfurnished, or 3x monthly rent if furnished. An exception exists for active service members, who may pay half the required deposit. Deposit must be returned within 21 days of a tenant leaving the unit. Under San Francisco law, landlords are required to pay tenants interest accrued upon their security deposit. Tenants have additional protections under the California Public Utilities Code than are found in many other states. Where utilities are sub metered but paid by the landlord, the tenant has right not to have utilities shut off even if landlord stops paying. The Utilities Code specifically prohibits landlords from price-gouging shared or sub-metered utility bills, and tenants are given the right to apply for reduced utility bills if they have life-supporting equipment in their homes.

A new statewide rent control law, Assembly Bill 1482, 'Tenant Protection Act 2019', came into force at the start of 2020. The bill ended 'just cause' evictions and made rent increases of greater than 5% plus the local rate of inflation illegal, though it exempts properties that are younger than 15 years old and does not replace many existing city laws (Chandler, 2020).

Cities in California have long been hindered from passing their own rent control legislation by the Costa Hawkins Rental Housing Act from 1995 that set limits on what kind of rent control policies they may adopt. Costa Hawkins sought to protect the rights of the landlord by allowing them to raise rents of units to market rate after a tenant vacates, and by prohibiting rent control measures on units built after 1995. It also exempts single-family homes and condos from rent control legislation. There is a growing call for the act to be repealed, and the initiative has successfully qualified for California's ballot in November 2020 (Chiland, 2020). As a result, cities such as Los Angeles and Santa Monica have some form of city rent control, but the laws apply only to units built before 1979. Sacramento created headlines by passing a city ordinance on rent control last year, limiting rent increases to no more than 10%, but only for buildings built before 1995 due to the limitations of the Costa-Hawkins Act.

California is the worst hit state for homelessness in the United States, with over 150,000 homeless people, and over 200,000 homeless children (U.S. Inter-agency, 2020). Los Angeles is the center of the crisis, with an estimated 59,000 homeless people, which has led to a number of successfully passed measures over the past few years, both to buy new housing for homeless people (Proposition HHH 2016) and to increase city sales tax to fund housing initiatives (Measure H 2017) (Lozano, 2020). The California legislatures 2020 session is working on several initiatives to address the housing crisis. SB50, which would have eased zoning restrictions to allow greater density, failed to pass the Senate, though a number of other bills have garnered much attention, including the now approved SB899, which would allow churches and nonprofit hospitals to build affordable housing on their land. Notably SB902 seeks to expand upon the failed SB50 and eliminate single family zoning across the entire state. Dozens more housing bills are included in this year's legislative session, primarily focusing on zoning, fees, and ADUs. California has issued a moratorium on evictions due to Covid-19, however, work is underway in the legislature to offer more permanent relief to tenants, mainly through bills such as AB828 which would allow tenants to have a court reduce their rent by up to 25%.

CONCLUSION

It is clear that many of the western states are facing the same problems. Rising rents, lack of affordable housing, and growing homeless populations are causing legislatures to seek solutions. California continues to be the state worst hit by these problems and is working to address them with a large number of bills. States such as Arizona and Nevada are influenced by the solutions of their neighboring states and have begun to update their existing tenant rights and programs to build affordable housing.

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