

Daily Journal

www.dailyjournal.com

THURSDAY, JANUARY 30, 2025

Wildfire housing crisis tests California price-gouging law

By Jeremy S. Smith
and Daniel M. Rubin

In the wake of the terrible fires in Los Angeles, media outlets (and social media posters) have been reporting on California's so-called price-gouging law and the incredible shortage of housing. For those who have lost their homes in the fires, finding a new home has been a herculean task, with some finding the price-gouging laws a major impediment. Real estate agents are apparently even telling owners of second homes not to offer those homes for rent because "it's not worth it."

At the same time, the attorney general has broadly warned landlords: "Our legislature has enacted robust protections for renters during times of crisis, and I'm committed to ensuring that those protections are followed and respected." He's also highlighted the criminal penalties that can accompany violations of these "robust protections," including one-year imprisonment. And he's already filed criminal charges against a real estate agent.

The law at the center of all this is California Penal Code section 396. At a high level, subdivision (e) of that section makes it illegal to increase rents by more than 10% during an emergency.

And it's not just a penal code statute. A violation of 396 "shall constitute an unlawful business practice and act of unfair competition" under the UCL, making landlords potentially liable in civil suits as well, including potentially via a class action.

At first blush, California's price-gouging law seems simple to understand. But it's far more complex



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than it seems, and some of the provisions make little economic sense.

• **How long are price-gouging protections in place?** Protections are in place for at least 30 days following the state of emergency declaration. However, the governor, state legislature, or local officials may extend protections beyond the initial 30-day window. Indeed, five days after Gov. Newsom declared a state of emergency in Los Angeles and Ventura counties due to the fires, he issued Executive Order N-4-25, extending price-gouging protections under subdivisions (b) and (c) - which impose restrictions on price increases for consumer goods and repair/reconstruction

services, respectively - through Jan. 7, 2026. While that order did not expressly mention subdivision (e), that extension could be down the pike (and some have contended subdivision (b) could also cover rental price hikes, though it should not, given the more specific and relevant subdivision (e)).

• **Are all rental leases covered?** No. The statute only applies to rental housing (including at mobilehome parks) with initial lease terms of no more than one year. This comes from the following definition of "housing" in the statute: "housing" means any rental housing with an initial lease term of no longer than one year, including, but

not limited to, a space rented in a mobilehome park or campground." And according to a report by The Center Square, the attorney general's press office acknowledged that "Penal Code Section 396's subdivision (e) does not apply to leases greater than one year in duration."

• **What is the scope of the price-gouging protections?** First, subdivision (e) doesn't just apply to the rental prices a landlord charges but also to those that are "advertised" or "offered." Moreover, it covers not only prospective tenants (i.e., those most likely to have been directly impacted by the fires) but also existing tenants seeking to renew their leases.

• **How do I determine the baseline “rental price”?** The statute (subdivision (j)(11)) provides specific guidance for how to determine the “rental price.” Determining the “rental price” is critical to ensure that any increases to rental prices remain within the limits imposed by section 396. The easiest case is housing rented at the time of the emergency; there, “rental price” is the actual price paid by the tenant at the time of the emergency. For housing not occupied at the time of the emergency declaration but rented or offered for rent in the past year, the most recent rental price offered applies. And for housing neither rented nor offered for rent within the year prior to the declaration, the rental price is 160% of the fair market rent established by the U.S. Department of Housing and Urban Development. There are further nuances for housing that becomes vacant while protections are in place, housing offered at a daily rate, and mobilehome spaces.

• **Are there exceptions to the 10% limitation?** Subdivision (e) contains two major exceptions.

First, an increase of more than 10% is permissible if a landlord can prove that increases in excess of 10% are “attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term.” *Second*, it’s allowed if the increase was “contractually agreed to by the tenant prior to the proclamation.” But there is no caselaw interpreting these provisions, though ambiguity should be construed in favor of a defendant in the context of this penal code provision.

• **What defenses are foreclosed by the statute?** Subdivision (e) specifically forecloses certain defenses. *First*, a landlord cannot argue that the increase in rental price was based on the length of the rental term, even though shorter leases are logically subject to higher rates given the costs associated with more frequent turnover. *Second*, it’s no defense that the increase is attributable to additional goods or services (except for furnished versus unfurnished apartment, which can increase the rent by 5%), notwithstanding that tenants are being

provided a different product. And *third*, it is no defense to argue that a tenant is not out of pocket because a third party, like an insurer, makes the payments at issue.

• **How does section 396 interact with local rent control ordinances?** Ensuring that a rent increase is kosher under the state’s price-gouging law does not immunize landlords against alleged violations of local rent control ordinances. In fact, subdivision (e)

expressly provides it does not authorize landlords to charge prices that exceed those authorized by local rent control laws.

To avoid criminal liability, these are just some of the nuances real estate agents and landlords should be aware of in the coming months and years. In our experience, these same issues will be key to assessing the viability of any civil cases, with respect to both the potential certification of a class action and the potential imposition of civil liability.

Jeremy S. Smith is a partner, and **Daniel M. Rubin** is an associate in the Los Angeles office of Gibson, Dunn & Crutcher LLP.

