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Questions and Answers on HB21-1121 From Tschetter Sulzer's July 14 Webinar

The following questions were asked by Tschetter Sulzer clients during last week's webinar (all questions are numbered). We thought all clients would benefit from having access to the questions and our answers, as well as our supplemental analysis of the issues involved.

1. How does HB1121 limit Rent Increases?

The new law prevents landlords from increasing rent more than "one time in any twelve-month period of consecutive occupancy by the tenant."

QUESTION #2 is the key concept of the legislation and should be studied thoroughly in order to make a decision about how you will handle rent increases.

Example Scenario (#1) Will Be Used To Illustrate How Rent Increases Can Be Calculated Using Different Methods: Tommy Tenant Signs a Six Month Lease from January 1, 2021 to June 30, 2021. Tommy renews for another six months from July 1, 2021 to December 30, 2021. Tommy renews again on January 1, 2022.

2. Based on Scenario #1, does this mean that I could raise Tommy's rent on July 1, but then have to wait another 12 months for the next rent increase?

Yes and no, depending on what periods you ultimately adopt to calculate rent increases. Remember the key phrase of the legislation is any "12-month period of consecutive occupancy." If Tommy's "period of occupancy" started January 1, 2020, then yes, you could raise Tommy's rent on July 1, 2021. No, you wouldn't have to wait another 12 months from July 1 to raise his rent again because starting January 1, 2022, this would commence another 12-month period of consecutive occupancy. Thus, under this method of calculating "12-month periods of consecutive occupancy," you could raise Tommy's rent again on January 1, 2022. However, if you did raise Tommy's rent on January 1, 2022, you would be prohibited from raising Tommy's rent again until on or after January 1, 2023. This concept is illustrated in *Table B Below*.

However, as discussed below and illustrated in *Table C and Table D*, there is room for interpretation with this law. A more conservative interpretation would be to view the 12-month restriction on rent increases as being measured from the first rent increase, so once an increase occurs then you are prohibited from another increase for 12 months. Measuring 12-month periods of consecutive occupancy this way (from date of first rent increase), means you would have to wait 12 months from July 1, 2021 for another increase.

One Method for Calculating 12-month Consecutive Occupancy Periods follows:

- Period 1 = Date of Occupancy (Lease Start Date) + 364
- Period 2 = Period 1 End Date + 365
- Period 3 = Period 2 End Date + 365 (*for long-term occupants, Leap Year will have to be factored in at some point*)



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Example Scenario (#2) Tommy Moves in on October 20, 2021. The applicable Periods would follow:

TABLE A

Period	Start	End	Leap Year	Rent Increases
1	October 20, 2021	October 19, 2022	No	1
2	October 20, 2022	October 19, 2023	No	1
3	October 20, 2023	October 19, 2024	Yes	1
4	October 20, 2024	October 19, 2025	No	1
5	October 20, 2025	October 19, 2026	No	1

THE KEY IS TO:

1. Determine How You Are Going to Determine “12-month Periods of Consecutive Occupancy”

- From the Date of Occupancy in the Lease (which was in effect on June 25, 2021) - Existing Leases (See Table B Below)
- From the effective date of the Law - June 25, 2021 (See Table C Below)
- From the date of the first rent increase (See Table D below)
- From the date of Occupancy in the Lease for Leases signed for Occupancy on or after June 25, 2021 - New Leases.

2. Raise the Rent Only Once During Any Applicable Period

Existing Leases Versus New Leases

New tenants a non-issue. Applicable periods are calculated as set forth above in *Table A*, i.e. 12-month period of consecutive occupancy is calculated from date of occupancy (Occupancy Date as set forth in the Lease if different than Lease Date) if on or after June 25, 2021.



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Existing Leases (Tenants) as of June 25, 2021

Because of the lack of clarity in the law, existing leases are more problematic. Several viable and logical options present themselves. The good news is that once a tenant moves out after June 25, 2021, on an existing lease, you won't have to worry about it again. In short, eventually, this issue will go away once 100% of your units have turned after June 25, 2021.

Options for Calculating “12-month Consecutive Occupancy Periods for Existing Leases (Existing Tenants)

1. Lease Occupancy Date as set forth in the lease that was in existence on the effective date of HB1121 (June 25, 2021) (See Table B Below)
2. Effective Date of the Law - June 25, 2021 (See Table C Below)
3. Effective Date of First Rent Raise After June 25, 2021 (See Table D Below)

TABLES B, C, AND D are calculated using our Example Scenario #1. **Example Scenario (#1)** Tommy Tenant Signs a six-month lease from January 1, 2021 to June 30, 2021. Tommy renews for another six months from July 1, 2021 to December 30, 2021. Tommy renews again on January 1, 2022.

Table B - Calculating “12-month periods of consecutive occupancy” from Occupancy Date in Existing Lease on the June 25, 2021 Effective Date of the Law

TABLE B - From Lease Start Date

Period	Start	End	Leap Year	Rent Increases Allowed
1	January 1, 2021	December 31, 2021	No	1
2	January 1, 2022	December 31, 2022	No	1
3	January 1, 2023	December 31, 2023	Yes	1
4	January 1, 2024	December 31, 2024	No	1
5	January 1, 2021	December 31, 2025	No	1



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As noted above, if the rent were raised on July 1, 2021, during the 1st Period (first 12-month period of consecutive occupancy) from January 1, 2021 to December 31, 2021, this would be OK. Additionally, under this view, you would then be able to raise the rent on January 1, 2022, but then not again until January 1, 2023. However, because the law is not clear, some might argue that you raised the rent in July and then you are raising the rent again in January of 2022 which is less than a “12-month period of consecutive occupancy.” Under this view, once you raise the rent, you can’t raise it again for a year or until July 1, 2022. *SEE TABLE D*, below. Under this view, the first Rent Raise is the Key Date and all 12-month periods of consecutive occupancy run from this first rent raise. The 1st Rent Raise Date camp is arguably the most conservative approach.

Table C - Calculating “12-month periods of consecutive occupancy” from June 25, 2021, the Effective Date of the Law

TABLE C - New Law Effective Date

Period	Start	End	Leap Year	Rent Increases Allowed
1	June 25, 2021	June 24, 2022	No	1
2	June 25, 2022	June 24, 2023	No	1
3	June 25, 2023	June 24, 2024	Yes	1
4	June 25, 2024	June 24, 2025	No	1
5	June 25, 2025	June 24, 2026	No	1

Based on the table and our scenario (Scenario #1), you raise Tommy’s Rent on July 1, 2021, but then not again until June 25, 2022. While the 1st Rent Raise Date Camp could still argue that it hasn’t been a year between rent raises, it is very close to a year under the “Effective Date” calculation method.



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Table D - Calculating “12-month periods of consecutive occupancy” from the Date of the First Initial Rent Raise After the June 25, 2021, Effective Date of the Law

Period	Start	End	Leap Year	Rent Increases Allowed
1	July 1, 2021	June 30, 2022	No	1
2	July 1, 2022	June 30, 2023	No	1
3	July 1, 2023	June 30, 2024	Yes	1
4	July 1, 2024	June 30, 2025	No	1
5	July 1, 2025	June 30, 2026	No	1

Again, under Scenario #1, Tommy Tenant Signs a six-month Lease from January 1, 2021 to June 30, 2021. **Tommy renews for another six months from July 1, 2021 to December 30, 2021 at which point Tommy’s Rent is raised.** Tommy renews again on January 1, 2022.

Under the First Rent Raise Camp, regardless of the fact that Tommy had been occupying the premises for nearly six months at the time the law became effective on June 25, 2021, once the rent is raised on July 1, 2021, the rent cannot be raised again until July 1, 2022 or a year after the rent raise. As noted above, this position is the most conservative position and would be the hardest for tenant advocates to challenge because it is so conservative.

However, some argue that it makes the least logical sense. For example, if Tommy Tenant signed three consecutive one year back-to-back leases starting on January 1, 2021, and Larry Landlord raises the rent three times during the 3 years, one time each in the years 2021, 2022, and 2023. Regardless of when Larry raised the rent during these periods, many would argue that Larry has not raised the rent more than once during any “12-month period of consecutive occupancy” which is the key limitation of the law.

The bottom line is that each individual landlord is going to have to decide for existing leases how they will calculate applicable 12-month periods of consecutive occupancy. Until we get some rulings from the various Courts, we won’t know which method the Court will ultimately endorse. As soon as we do get some rulings, we will be sure to let everyone know.



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3. Would HB1121 require us to retroactively adjust the amount of being charged under any circumstances?

No. Laws may not be retroactively applied.

4. When Does HB1121 take effect?

HB1121 became effective immediately upon the Governor's signing on June 25, 2021. Thus, HB 1121 applies to all leases that were in effect on or after June 25, 2021.

One of the Most Important Aspects or Significant Impacts of HB1121

5. Is this law limited to just rent, or does it also include other fees, amounts, charges, such as month-to-month fees, tech, valet, etc.?

It depends on the lease. Many, if not most, leases contain the following or a similar clause:

Regardless of whether specifically stated in any applicable provision of this Lease Contract or any addenda, any and all rent, amounts, charges, sums, damages, or money owed by you under this Lease Contract or any addenda shall be considered rent, and we shall have all remedies for non-payment of any amount including eviction.

If your lease contains this or similar language, all amounts are considered rent. **THIS MEANS ANY INCREASE IN THESE AMOUNTS WILL BE CONSIDERED A RENT INCREASE.**

Accordingly, we highly recommend that you review your lease for these specific and other potential lease issues. **One of the Biggest Takeaways from Reviewing this Document is that you will have to make sure that your lease does not inadvertently "raise rent."**

Landlords Need to Address the Cut-Over Problem with Items that Could Inadvertently Result in Rent Increases

Obviously on June 25, 2021 (the effective date of the law), many landlords had leases in place that classified various charges or fees in the lease as "Rent" or "Additional Rent" as discussed in this Question #5. For example, a lease might have an automatic month-to-month fee which is considered "additional rent." As discussed, this would be a rent raise. Accordingly, to both prevent inadvertent rent raises in violation of HB1121 and to prevent unwanted rent raises not based on raising the main base rent, all landlords should do the following:

1. **Review existing leases** for these items and language.
2. **Determine how these items will be handled until the tenant can be put on a new lease.** For example, if the tenant's existing lease states that a month-to-month fee will be charged if the tenant goes MTM and it is considered additional rent, decide how you will deal with this situation. One, will you just forego charging the MTM fee so it won't be considered a rent raise and so that you can raise the rent to your determined amount in the future. Two, collect the fee and accept that this is your one rent raise for the next twelve months?
3. **Fix Your Lease**, so these are non-issues.
4. **Make all renewals going forward sign the complete new lease that addresses these issues**, and not just a renewal document or Amendment.



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Again, the good news on this is that once you have fixed your lease, and all your units have turned, then it becomes a non-issue.

6. If a tenant signs a six-month lease and then renews for three months and then decides to go MTM, are we required to keep the rent the same? Are we prohibited from charging month-to-month fees?

Assuming the tenant renewed for the three-month period at a higher rate, you could not raise the rent again until the start of month 13, assuming the tenant continued to occupy. Whether or not you could charge MTM (month-to-month) fees depends on how those fees were addressed in the lease and overall what the lease said. If the MTM fees were considered "additional rent" then they could not be charged. If the MTM fees were NOT considered additional rent then they could be charged.

7. Tenant is month to month now so their rental rate is \$100 above what it would be if they were on a term lease. Can we renew them for another term at a lower rate if they were ready to sign up for another term, or would that rate need to stay for at least a year?

You could renew for the lower rate or the rate without the MTM fee.

8. Can we still offer short term and MTM leases?

Yes. You just can't raise the rate on a short term or MTM lease more than once during any 12 months of occupancy.

9. What is the impact of move-in incentives?

None, if move-in incentives are not tied to rent. If move-in incentives are tied to rent or have to be paid back as rent, then it would depend on how the lease was structured.

10. Would it be better to make month-to-month lease charges very high, and then drop rent if they sign a lease?

Not necessarily. MTM fees or charges are only affected if they are considered "rent" or "additional rent" based on the lease structure. *SEE ANSWER TO QUESTION #5.*

11. On a short-term lease we raise the rent by \$100. Can we still do this?

Yes, but this would be considered a rent raise if the tenant were an existing tenant and now was going to a short-term lease. Meaning you could not re-sign the same tenant, for the same unit to a new longer term and raise the rent above the short-term rental rate, at least not until after 12 months of consecutive occupancy had passed. It would be preferable to have the tenant go MTM on a lease that clearly delineates that the MTM fee is not "rent."

12. If we do a month to month at a higher rental rate can we keep the rent at the same price for a year or do we need to go down to the 12-month renewal rate they were offered prior?

You can keep the higher MTM rental rate because it would be considered only one rent increase during a 12-month consecutive period. However, keep in mind that a tenant can end a month-to-month tenancy with proper notice. You could sign them to a new term lease for the higher rate. Nothing forces you to decrease the rent to what they were offered previously and failed to accept.

13. Does this affect changes in flat rate utilities?



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It depends on how the lease is structured and whether the utilities are considered additional rent. If they are not considered "additional rent" under the lease then it has no effect. If the utilities are considered additional rent and you raise the flat rate (or the utility provider does this would be equivalent to raising the rent and would constitute the one raise during any 12-month period of consecutive occupancy. *SEE ANSWER TO QUESTION #5.*

14. Are there any restrictions on giving notice to quit to a resident that is on month to month?

There are a few restrictions that apply to all non-renewals: you cannot non-renew a resident for a discriminatory reason, or in retaliation for a repair issue. There is now a restriction that you cannot non-renew a tenant that does not have a written lease in order to circumvent the restrictions in this bill preventing an additional increase in rent.

15. Does HB1121 apply to the rental of single-family homes as well as apartments?

Yes. HB1121 applies to all residential rentals.

16. If we renew a tenant with no rental increase, can we rent to new tenants at a higher rental rate even though we renewed the existing tenant at a lower rent?

This would depend on the facts and circumstances. As a general rule, at any given time, you want to offer the same rates to all tenants (existing and prospects) to avoid allegations of discrimination. You may offer different rates if you have legitimate non-discriminatory business reasons for doing so. For example, you may offer new tenants (prospects) lower rental rates or concessions to get them in the door and not offer those same discounts on renewals. This new law provides a legitimate non-discriminatory business reason as well. For example, if a new tenant asked why his rate is higher than an existing tenant, depending on the facts, it might be higher because you already raised the rent on the other tenant once and are prohibited from raising it again until after the expiration of the 12-month period of consecutive occupancy.

17. If a tenant renews in September 2021, would you have to keep them at the same rate until March of 2022?

It would depend on the facts and method for calculating 12-month periods of consecutive occupancy. But here is how it would play out if we assume the tenant is renewing a six-month lease for another six-month lease with an original lease date of March 1, 2021.

Remember: All Periods are 12 Months of Consecutive Occupancy

Period 1: March 1, 2021 - February 28, 2022 Period 2: March 1, 2022 - February 28, 2023

Assuming that the tenant was raised for the September 2021 renewal - his rent could not be raised until March 1, 2022. If rent is raised for a March 1, 2022 renewal, then the tenant's rent could not be raised again until March 1, 2023. Remember, there is no consensus on calculating "12-month periods of consecutive occupancy" for leases that were in effect as of June 25, 2021 (the effective date of the HB1121). *SEE QUESTION #2, and in particular Tables B, C, and D.* If you were using the First Rent Raise Date to calculate future rent increases, and the rent was raised on September 1, 2021, then the rent couldn't be increased again until September 1, 2022.

18. On a month-to-month lease, is the "existing lease" date the prior month?

Not necessarily but it could be, again depending on how you calculate "12-month periods of consecutive occupancy." The law was enacted (became effective) June 25, 2021. Assuming a tenant is on a MTM lease on the date of enactment, this means that you could use the date the tenant moved in to measure the "12-month period of consecutive occupancy." Thus, if the tenant first occupied in February 2021, this would be the starting point. If the tenant first occupied in June 2021, this would be the starting point.



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Alternatively, you could argue that the first month of occupancy after the effective date of the law is July 1, 2021, and measure the 12-month period of consecutive occupancy from there. This would be the more aggressive approach. This is discussed above. You could also use the First Rent Raise Date to measure the 12-month occupancy period. *SEE ANSWER TO QUESTION #2, and in particular Tables B, C, and D.*

19. If a resident signs a 12-month contract in September 2021 at that same rate they were at originally, would we have to wait to increase until Sept 2022?

No. You could increase their rent between September 2021 and September 2022, unless you had raised their rent between June 25, 2021, and August 31, 2021.

20. On June 25, 2021, we notified multiple tenants of a rent increase effective July 1st. Where do we stand on the retroactivity of this law?

Laws cannot have a retroactive effect. But we would note the law became effective June 25, the same date you gave notice of rent increases. However, when you gave notice of the rent increase is irrelevant. What matters for each tenant is how long they have occupied and their rent raise history (as measured during any 12-month period of consecutive occupancy) as discussed in the answers to other questions and when their rent increases went into effect. Since the rent increase per your notice was on July 1 (after the effective date of the law), you couldn't raise rent again until July 1, 2022. *SEE Question #2 for Calculating Periods for Existing Tenants.*

22. A Month-to-Month charge is technically a fee. As long as we are charging it as a fee, is that allowed?

Depends on your lease. See Answer to Question #5. If your lease makes it clear that any charges associated with MTM occupancy is not "rent," then it should be allowed without being considered a rent increase.

22. What about additional fees, like utilities?

Depends on your lease. See Answer to Question #5.

23. If a tenant wants to extend on a month-to-month basis would it be best to generate a new 12-month lease with a newly stated rental amount with language stating the lease may be terminated by either party with a given notice period?

Not necessarily. First, if you did this, you could only raise the rent as set forth in this document, i.e. once during any 12-month period of consecutive occupancy. If the lease were written correctly (which obviously we recommend), the tenant going to MTM would be charged the MTM fee and it would not be considered additional rent. *See Answer to Question #5.*

24. If an apartment is under new management, is the 12-month restriction applied?

Yes. For existing tenants applicable rent raise periods would be calculated in accordance with Question #2. The fact that management changed would not alter how these periods are calculated.

25. We had a tenant that renewed in May for a three-month lease. We raised the rent then. He renewed for another six months in July and we raised the rent. Should we retract the increase?



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No. You could take the position that the periods for starting rent increases did not start until the new law became effective on June 25, 2021, and thus run from there. See Answer to Question #2. However, at this point you couldn't raise the rent again until July 2022.

26. Unwritten lease. Would that apply to squatters? We are seeing more and more of those.

No. HB1121 does not apply to squatters.

27. If it's a blue moon lease that is written to roll MTM, is that considered a written lease?

Yes. By the way, the "Blue Moon Lease" is now known as the "Click & Lease."

28. For rent increases, if we charge a flat fee for "Other Rent" that is in addition to base rent for internet or Common Area Maintenance, etc., would the same rent increase limitation apply to the Other Rent?

Yes. See Question #5.

29. Should we eliminate short-term renewals?

This is a business decision. Whether short or long, you still can only raise the rent once a year for any 12-month period of consecutive occupancy. One argument for short-term rentals remaining is that if the tenant left (the unit turned), you could raise the rent for the new tenant. One argument against this is that you don't have the security of a longer term and now have lost the advantage of being able to raise the rent more often.

30. Does this apply to a landlord that owns only one single-family rentals?

Yes.

31. Some of my tenants are on month-to-month. If I want them on a yearly lease, can I raise the rent on the yearly lease?

Yes, as long as the raise complies with the new law, meaning you are not raising the rent more than once during any 12-month period of consecutive occupancy. See Question #2 for determining occupancy periods for existing tenants and applicable periods to raise rent.

32. What is the notice of increase for residents on leases? If you have a lease, do you need to give 30 or 60 days' notice to increase the rent?

Depends on your lease language and the facts. For example, Tommy Tenant signed a six-month lease from January 1, 2021 to June 30, 2021. The lease requires 30 days' notice to terminate the lease at the end of the lease. You would have to give Tommy notice of the rent increase on or before May 31. If the lease required a 60-Day Notice, then the notice would have to be given on or before May 1, 2021. However, such notices should be given well in advance of

these dates so that the process can be handled legally and in a customer-friendly manner. If the lease is silent, no notice is required to terminate a lease that ends at a date certain.

THIS IS A VERY COMMONLY MISUNDERSTOOD POINT, OR IT'S NOT CARRIED OUT CORRECTLY FROM AN OPERATIONAL STANDPOINT. The correct way to handle is as follows:

1. Give Notice of the Rent Increase/Offer to Renew



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2. Set deadline for tenant to sign (deadline should be far enough out to give tenant time, and to give you time to terminate the lease if the tenant doesn't sign)
3. If tenant fails to sign new lease/renewal lease for higher rent, then serve Notice to Quit for End of Term

Similarly, landlords fail to correctly handle non-renewals. Frequently, they will just give a written notice (a letter) of non-renewal. While this is fine, in order to legally terminate the tenant's right of occupancy at the end of the term, many courts will also require the landlord to serve a Notice to Quit Pursuant to C.R.S. § 13-40-107. Thus, the best course of action is to always serve the statutory notice even if you have given written notice of non-renewal per the lease. Conversely, many landlords give a notice of rent increase without a corresponding NTQ/non-renewal which is merely an unenforceable offer and allows the tenant to refuse the offer and continue on with the current lease at its current rate until the landlord properly terminates it.

33. If we have a current resident on a seven-month lease can we offer a five-month renewal at the same rate to get to the end of a year period?

You could, or you could raise the rent depending on the facts, and what rent raises have been made during the applicable 12-month period(s) of consecutive occupancy. *SEE QUESTION #2.*

34. Typically a resident without an agreement or MTM would only be required to give 30-day notice. Since the landlord is now required to give 60-day notice, does this require a resident to also give 60 days?

There is a lot to unpack and clarify here. First don't confuse "notice of rent increase" with "notice to terminate." But to start with, the most important part of the answer to this question is that the 60-day requirement only APPLIES TO VERBAL LEASES. Thus, landlords are only required to give 60-Day Notice of a rent increase to a tenant if the tenant is on a verbal lease. This is the rule for a rent increase for a verbal lease. The current rules for terminating the tenancy by either side still haven't changed, meaning how much notice is governed by the lease. Since it is a verbal lease situation, it is very unlikely that the landlord and tenant have a "verbal agreement" as to the amount of notice. Under Colorado law, the amount of notice required to terminate a month-to-month tenancy is 21-Day notice. However, it is important to note that HB1121 specifically prohibits landlords from terminating verbal leases if the intent is to raise the rent. Specifically:

A LANDLORD MAY NOT TERMINATE A RESIDENTIAL TENANCY IN WHICH THERE IS NO WRITTEN AGREEMENT BY SERVING A TENANT WITH A NOTICE TO QUIT PURSUANT TO SECTION 13-40-107 WITH THE PRIMARY PURPOSE OF INCREASING A TENANT'S RENT IN A MANNER INCONSISTENT WITH THIS SECTION.

35. For renewals - If they have already renewed within the past 12 months and received an increase, are we able or unable to give another renewal increase?

Depends on the facts. You may be able to increase again as long as you were in compliance with the law. *SEE ANSWER TO QUESTION #2* for calculating applicable rent raise periods for existing tenants.

36. A resident signed a six-month renewal on June 1. Can we give them another increase when that six-month expires?

Likely. *SEE ANSWER TO QUESTION #35.*

37. We raised the rent on a tenant on a three-month renewal. He renewed again for six months and we raised it again in July. Do we need to retract the increase since the law was signed on June 25th?



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No. You could take the position that the first rental increase period runs from June 25, 2021, and since you have only raised rent once since then, you are in compliance with the law.

38. What is the point of having short term leases if we cannot do an increase at the end of the lease?

SEE ANSWER TO QUESTION #29.

39. If we have someone who wants to transfer to a larger apartment, but we've already raised their rent that year, can we still increase due to them going into a new apartment? New lease equals new start date/clock for rent prices? Just trying to get clear.

Yes. Again, the key language is you can only raise the rent once during any "12-month period of consecutive occupancy." We would argue that you can't consecutively occupy two separate units. So when they move, the consecutive month clock restarts for the new unit. If the tenant moves at the landlord's request, arguably the clock would not restart (landlord shouldn't be able to restart the clock and raise rent by relocating a tenant). However, if the tenant initiates the transfer regardless of unit type or floor plan type, the 12-month period of consecutive occupancy clock resets and you could raise it upon transfer.

40. I think it would be helpful for you to distribute some examples of how to apply for the rent increase. Can you please do this?

Yes, based on your question and client demand we have laid out several examples. *SEE ANSWER TO QUESTION #2.*

41. What about increasing "water/sewer/trash fees?"

SEE ANSWER TO QUESTION #5.

42. If we call it pet rent, what about if they add a pet? We can't increase the pet rent even if they add a pet?

SEE ANSWER TO QUESTION #5. Your lease is going to have to be restructured to deal with this issue, and thus it is likely that "Pet Rent" will no longer be referred to as rent.

43. How are rent concessions impacted by the rent increase law? For example, the rental rate is \$2200 but a three-month concession lowers the rent to \$2K at the front side of the lease. Is this now considered a rent increase?

No. The rent isn't increasing, it is adjusting to its normal level based upon a signed agreement. The rent is coming up from a "discounted amount" and not increasing beyond what the tenant originally agreed to pay. This result would be the same even if you had "concession clawback" language if the resident defaults.

44. We are currently working on October renewals, do we need to take this new law into consideration for those?

Absolutely. Any increase would be the one increase allowed during the "12-month period of consecutive occupancy." As noted in the *ANSWER TO QUESTION #2*, all landlords should build out (or program in management software if possible), applicable rental increase periods.

45. Would it be ok to make the month-to month auto increase after the initial 12-month lease an increase of fifteen percent?



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Yes, as long as you are not increasing the rent more than once during any 12-month period of consecutive occupancy.

46. If we sent notices that rent will be increased effective July 1st, back in May, are we allowed to still move forward with the increase since we sent the notice of increase before the law went into effect?

SEE ANSWER TO QUESTION #20.

47. We include the carports as rent. If someone should add a carport in the middle of lease, how do we handle the increase for that year?

SEE ANSWER TO QUESTIONS #5 AND #42.

48. Do you guys see anything coming in the future for limitations on lease break fees? Say potentially our industry decides to get rid of month to month and short terms, locking people into longer leases- have you heard any word on changing our current termination policies?

YES. SB173 directly impacts lease break fees and will be the subject of the next webinar.

49. Could you increase the base rent in addition to "other charges" as long as it was for the same renewal?

Yes. But the industry is going to have to reorientate its thinking. Currently, you have monthly base rent and everything else which is all considered rent. Going forward, you will still have base rent, but everything else needs to be called something else other than "rent" to decouple it from the prohibitions of HB1121.

50. Is the date on the renewal considered to be the new "original date" and the 12-month starts then?

SEE QUESTION #2 for calculating the applicable 12-month period(s) of consecutive occupancy.

51. Are increases in fees, pet fees, utility fees, parking fees, laundry fees exempt. These can be an increase of service fees at a time during the lease?

Probably not. *SEE ANSWER TO QUESTION #5.*

52. What if a resident signed for a nine-month lease that expires in July but signed a lease renewal in May with an increase. Can we move forward with this increase?

Yes. But you will need to calculate applicable periods and limit future rent increases accordingly. *See ANSWER TO QUESTION #2.*

53. With parking for example, what about issuing a separate lease for parking spots instead of an addendum which is typical with parking? Wouldn't a specific parking lease classify as more of a commercial lease in practice than residential, even if the parking is affiliated with a residential property?

No. Although having a separate lease or a license agreement for parking might be a potential work-around. Again, the simplest work-around is to stop calling everything other than base monthly rent "rent."

54. If we just took over a community, I am assuming that we have to look at previous leases in the actual file to confirm that rent wasn't raised within 12 months?



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Yes. There is no way you could avoid violating the law unless you audit the files, and then determine applicable 12-month periods of consecutive occupancy. Unless you take the position that you are going to start the clock on June 25, 2021, or adopt the First Rent Raise Date calculation method. *SEE ANSWER TO QUESTION #2*. However, depending on when you took or are taking over these might not be options. The safest course of action would be to audit the files.

55. If we have someone who is on a six-month lease and we have increased them at the six-month renewal. If we offer them no increase on a 12-month lease there is nothing that would require them to sign another lease, since a MTM would also be the same rate. Is this correct?

First, whether you could increase them on the 12-month renewal offer would depend on the facts. Assuming you can't increase, whether the tenant signed would be up to the tenant. Nothing ever requires a tenant to sign a new lease. I guess the point you are trying to make is why would they sign a 12-month deal if they could just remain month-to-month at the same rate. Our point is that you could charge the MTM fee as long as it wasn't considered additional rent. Assuming you can't do that because the tenant is on a current lease then your only leverage would be to terminate the MTM, i.e. have a policy that you are going to terminate all residents who won't renew by signing a new deal within one month. In other words, your policy is that you only allow tenants to be MTM for X number of months without renewing and if they don't, then they are terminated.

56. If a tenant has been MTM since January can I increase their rate or do I have to wait?

Would depend on rent increase history and how you are going to calculate the 12-month periods of consecutive occupancy. *SEE ANSWER TO QUESTION #2*.

57. What about those of us that put out our lease renewals for August 1st and September 1st?

Doesn't matter. You will just have to go through the process set forth in the *ANSWER TO QUESTION #2*, and proceed from there.

58. Please clarify if the 12-month period begins 6/25/21 or begins 12-month prior. i.e. example, month-to-month increase 10/1/20 and has continued on a month-to-month basis, does the 12-month period begin 10/1/21 or 6/25/21?

SEE ANSWER TO QUESTION #2 for determining applicable 12-month period(s) of consecutive occupancy, including starting dates for both EXISTING tenants and NEW tenants (tenants leased to on or after June 25, 2021).

59. Do I understand that you can raise rents once in a 12-month term and raise again after the 12-month term so you could raise like every 6 months as that is once in a 12-month term? Sorry, so confusing!

You can raise it once every 12-month period of consecutive occupancy. *SEE QUESTION #2*.

60. What about if the lease increase is over what we offer on market rent, do we need to lower the rent?

No, not necessarily. You do need to be concerned with fair housing-related issues. *See ANSWER TO QUESTION #16*.

61. If a new roommate moves in and a new lease is started at a higher rent, is this considered the original tenancy or a new tenancy, i.e. when does the 12-month period begin when there is a new roommate and a new lease?



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Our position is that any change in tenant composition constitutes a new 12-month period of consecutive occupancy. However, how the courts will rule on this remains to be seen. Accordingly, the 12-month clock would reset upon change of tenant composition and you would then calculate your 12-month periods in accordance with the *ANSWER TO QUESTION #2*.

62. Are we still allowed to do a Non-Renewal?

Absolutely. But *See ANSWER TO QUESTION #14*, for limitations.

63. If a tenant adds paid parking or a pet during the lease, would those additional fees be counted as rent increases?

Depends. *SEE ANSWER TO QUESTION #5*.

64. If I had a resident who's lease ended June 25th and I am not renewing them, how many days' notice do I need to give?

It depends on what your lease says. If your lease is silent, then likely the statutory 21-Day notice to terminate a month-to-month tenant would be the most likely notice. Note, this notice is usually only effective for the end of the month, so must be served at least 21 days prior to the end of any given month.

65. If they transfer to a similar floor plan, can we charge market rent for the new unit?

Yes. *SEE ANSWER TO QUESTION #39*.

66. There is no cap on how much of an increase we can implement, just how often? I have seen some companies doing 30-50% increases that seem like something that would be capped rather than how often.

Yes, this is correct. There is no current cap on the amount you can raise, it is whatever the market will bear.

67. Isn't it longer than 21 days (the notice to quit or terminate) if a tenant has been on month to month since June of 2017?

No, the notice period is specified by the lease or by statute if the lease is silent. 21-Day notice to terminate a month-to-month tenant regardless of how long they have been there.

68. Does HB1121 apply to Section 8 Households who pay (whose rent is determined) by income?

Arguably no. Certain federal housing programs require that the tenant's portion of the rent change based on their income. If the federal program requires that the tenant's portion of the rent change based on the tenant's income, this regulation would preempt any state legislation to the contrary based on the Supremacy Clause or what we commonly

refer to as federal preemption. Further, even if the tenant's portion of the rent changes, typically the contract rent does not change except at the annual recertification, which occurs once a year. Thus, the landlord is not raising the rent. Rather the resident's portion is increased because their income increased, not because the rent was raised.

69. Do any of these new laws apply to RV lots or Mobile Home Lots in which case only the lot is rented?

Yes, HB1121 applies the limit on rent increases to mobile home lots.