



DRAFT

Frequently Asked Questions: New and Additional Occupants under the CSFRA and State Law

To minimize confusion and because certain terms are not defined in the CSFRA, this FAQ discusses hypothetical scenarios with fictional names as illustrative examples. This FAQ does not use legal terms like co-tenant, subtenant, or master tenant.

NEW SPOUSE, CHILD, OR RELATIVE JOINS A HOUSEHOLD

1. What happens if Xavier wants to move in with his spouse Yolanda?

Under the CSFRA, Xavier may move in with Yolanda so long as: (a) the two are legally married or are registered domestic partners, and (b) Xavier's presence in Yolanda's rental unit does not exceed occupancy limits for the unit under state law.* (CSFRA § 1705(a)(2)(B).)

Neither state law nor the CSFRA provides landlords the affirmative right to verify that Xavier and Yolanda are legal spouses; a landlord could potentially sue Yolanda for breach of lease based on Xavier's occupancy if the lease prohibited additional occupants, and then Yolanda could affirmatively defend the lawsuit by demonstrating to a court that Xavier and Yolanda are legal spouses.

The RHC may wish to promulgate regulations regarding any verification of eligible family-member status and/or application processes to avoid unnecessary legal actions.

2. What happens if Andrea adopts a child Beebee?

Under the CSFRA, Andrea may house Beebee so long as: (a) Andrea is Beebee's lawful parent/guardian, and (b) Beebee's presence in the rental unit does not exceed occupancy limits for the unit under state law.* (CSFRA § 1705(a)(2)(B).)

Neither state law nor the CSFRA provides landlords the affirmative right to verify that Beebee and Andrea are legally related to one another; a landlord could potentially sue Andrea for breach of lease based on Beebee's occupancy if the lease prohibited additional occupants, and then Andrea could affirmatively defend the lawsuit by demonstrating to a court that Andrea is Beebee's lawful guardian/parent.

The RHC may wish to promulgate regulations regarding any verification of eligible family-member status and/or application processes to avoid unnecessary legal actions.

* Generally, state law requires that every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two. Different rules apply in the case of "efficiency units." (See Uniform Housing Code section 503(b), Health and Safety Code section 17958.1.)

3. May the landlord charge fees, request an additional security deposit, or increase the monthly rent when Xavier moves in with Yolanda, or when Beebee moves in with Andrea?

Under the CSFRA, Yolanda and Andrea may house their eligible family members and the landlord is not entitled to additional monthly rent for the unit. (CSFRA § 1705(a)(2)(B).)

Under the CSFRA, Yolanda and Andrea may house their eligible family members and the landlord is not entitled to request an additional security deposit or otherwise increase the existing deposit. (CSFRA § 1706(c).)

Because the verification and/or application process for housing eligible family members is not set forth in the CSFRA or under state law, it is unclear whether the landlord could charge an application screening fee based on Civil Code section 1950.6.

The RHC may wish to promulgate regulations regarding any verification of eligible family-member status and/or application process to avoid unnecessary legal actions.

4. What happens if Xavier and Yolanda separate (or Yolanda dies) and Xavier stays in the rental unit? What happens if Beebee turns 18 years old, Andrea moves out (or Andrea dies) and Beebee stays in the rental unit?

Under the CSFRA, both Xavier and Beebee appear to have the right to stay in the rental unit even after the original person living in the rental unit moves out or passes away. Although Xavier or Beebee might be able stay in the rental unit, the landlord may also have the ability to reset the monthly rent charged for the rental unit based on the Costa-Hawkins Rental Housing Act. (Civil Code § 1954.53(d).) Ambiguity about setting new rent exists because it is unclear under the CSFRA and state law: (a) when Xavier's and Beebee's tenancies began, (b) whether a new tenancy is created when the original tenant moves out that allows for vacancy decontrol to apply, and (c) whether Xavier and/or Beebee lived in the unit on or before to December 23, 2016 when the CSFRA became effective.

The RHC may wish to promulgate regulations interpreting the CSFRA as it relates to state law, including the Costa-Hawkins Rental Housing Act, with respect to vacancy decontrol and the legal status of individuals who move into an existing tenancy.

REPLACEMENT ROOMMATE

5. What happens if Julia wants to replace roommate Kelly with roommate Lisa?

Under the CSFRA, Julia can replace Kelly with Lisa as a roommate so long as: (a) Julia continues to live in the rental unit, (b) Julia requests the landlord's approval for the roommate swap in writing, and (c) the landlord approves the swap. However, if Lisa will be legally obligated to pay rent to the landlord, then the landlord may reject Lisa based on a lack of

creditworthiness; if Lisa will not pay rent directly to the landlord then the landlord cannot unreasonably refuse the proposed roommate swap. If the landlord does not respond to a written request by Julia to approve the roommate swap, then the swap is deemed approved after fourteen (14) days.

The RHC may wish to promulgate regulations regarding any application process applicable to replacing former roommates, which process might vary depending on whether the new roommate pays rent to another roommate or directly to the landlord.[†]

6. May the landlord charge fees, request an additional security deposit, or increase the monthly rent when Lisa takes Kelly's place and moves in with Julia?

Under the CSFRA, Lisa may replace Kelly as Julia's roommate and the landlord is not entitled to additional monthly rent for the unit.

Under the CSFRA, Lisa may move in and live with Julia, and the landlord is not entitled to request an additional security deposit or otherwise increase the existing deposit. (CSFRA § 1706(c).) The CSFRA does not regulate actions among roommates and former roommates; Lisa could agree to reimburse Kelly for any portion of the security deposit Kelly paid to the landlord so that the landlord would be effectively holding a security deposit from Lisa and Julia.

Unlike housing an eligible family member (see the answers to questions 1-4), the CSFRA requires Julia request landlord approval of the roommate swap. If the new roommate, Lisa, will be required to pay some rent directly to the landlord, then the landlord may investigate Lisa's creditworthiness and charge an application screening fee in accordance with Civil Code section 1950.6.

However, the CSFRA is unclear regarding an application process for replacing a departed roommate if the new roommate will not pay rent directly to the landlord. Accordingly, if Lisa will not pay any portion of rent directly to the landlord, then it is unclear whether the landlord could charge an application screening fee.

The RHC may wish to promulgate regulations regarding any application processes applicable to replacing former roommates to avoid unnecessary legal actions.

SUBLETTING, SIGNFICANT OTHERS, AND ADDITIONAL ROOMMATES

7. What happens if Gabriel lives alone and wants to add a new roommate to share the rental unit?

[†] Even partial payment of rent may have legal implications for the landlord-tenant relationship. Landlords and tenants may wish to seek legal advice regarding the payment by and acceptance of rent from a new roommate.

The CSFRA does not discuss whether Gabriel may add a new roommate to the unit, unless the new roommate is an eligible family member or replaces a former roommate (see answers to questions 1-6). Accordingly, the addition of a new roommate to the unit may be governed by Gabriel's lease or rental agreement with the landlord.

If the rental agreement or lease (and therefore the landlord) allows the addition of a new roommate, it is unclear how the CSFRA would impact Gabriel. For instance, it is unclear whether the landlord could increase the monthly rent for the unit based on the additional person. Likewise, it is unclear whether the landlord could reapportion utility costs that are paid for by the landlord (e.g. electric or water costs in buildings with one meter).

The RHC may wish to promulgate regulations describing whether and how a landlord and tenant address adding a new roommate to an existing tenancy.

8. If Gabriel and the landlord agree to allow the new roommate to live with Gabriel, is the new roommate protected by the CSFRA?

It is unclear how the CSFRA would impact Gabriel's new roommate. For example, if the new roommate pays rent to Gabriel, it is unclear whether Gabriel can charge the new roommate more than the total rent paid to the landlord, or whether Gabriel can increase the rent paid by the new roommate more than once per year or by an amount greater than the annual general adjustment. Likewise, it is unclear whether the new roommate would receive the benefits of just cause for eviction protections or if Gabriel could force the new roommate to leave without a reason identified in the CSFRA.

The RHC may wish to promulgate regulations describing how the CSFRA affects new roommates, including limitations on rents, rent increases, and eligible reasons for removing the new roommate.