



COVID-19 California Eviction Moratorium

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Statewide Moratorium

On March 27, 2020, Governor Newsom issued an Executive Order implementing a statewide moratorium on evictions for the State of California (“Statewide Order”). E.O. N-37-20. The Statewide Order extends the deadline specified in Code of Civil Procedure § 1167 for tenants to respond to a summons for unlawful detainer based upon nonpayment of rent by 60 days, provided the tenant satisfies three conditions. E.O. N-37-20 § 1; Cal. Code Civ. Proc. § 1167. First, the tenant must have paid rent to the landlord prior to March 27, 2020, pursuant to an agreement. E.O. N-37-20 § 1(a). Second, the tenant must provide the landlord written notice either before the rent is due or within seven days of the due date that the tenant needs to delay all or some payment of rent because of an inability to pay due to reasons related to COVID-19. E.O. N-37-20 § 1(b). Third, the tenant must retain and provide the landlord with “verifiable documentation” that supports the tenant’s assertion that it cannot pay rent for reasons related to COVID-19 before the time the tenant provides payment of the back-due rent. E.O. N-37-20 § 1(c). Verifiable documentation includes, but is not limited to, termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters or statements from an employer or supervisor explaining the tenant’s changed financial circumstances. Id. The tenant protections set forth in the Statewide Order will remain in effect through May 31, 2020. E.O. N-37-20 § 3. Writs to evict a tenant for nonpayment of rent who otherwise qualifies for protection under the Statewide Order may not be enforced before the May 31 termination date. E.O. N-37-20 § 2.

CA Judicial Council Emergency Court Rules

On April 6, 2020, the Judicial Council adopted a set of emergency rules, including Emergency Rule 1 concerning unlawful detainers. Pursuant to Emergency Rule 1, a court may not issue a summons on a complaint for unlawful detainer unless the court finds, in its discretion and on the record, that the action is necessary to protect public health and safety. ER 1(b). No defaults or default judgments for restitution may be entered for a defendant’s failure to appear unless the court determines (i) the action is necessary to protect the public health and safety, and (ii) the defendant failed to appear within the time provided by law, including any applicable executive orders. ER 1(c). All trials for unlawful detainer set as of April 6, 2020, must be continued at least 60 days from the initial date of trial. ER 1(d). Where the defendant has appeared but no trial date was set by April 6, 2020, the court may not set a trial date earlier than 60 days after a request for trial is made unless the court finds that public health and safety require an earlier trial date. Id. Emergency Rule 1 will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, unless otherwise amended or repealed by the Judicial Council. ER 1(e).

SF Residential Rent Eviction Moratorium

The City of San Francisco enacted its own eviction moratorium (“SF Moratorium”) by Mayoral Proclamation on March 13, 2020. Under the SF Moratorium, a tenant may not be evicted for non-payment of rent due on or after March 13, 2020, until six months after the date the SF Moratorium expires or is terminated, provided that the tenant was unable to pay due to financial impacts related to COVID-19. TWELFTH SUPPLEMENT TO MAYORAL PROCLAMATION DECLARING THE EXISTENCE OF A LOCAL EMERGENCY DATED FEBRUARY 25, 2020 (“Twelfth Supplement”) § 1(a). Tenants are provided at least until the six-month mark to pay back any past due rent, and may use the protections of the SF Moratorium as an affirmative defense to any eviction for non-payment of rent due to reasons related to COVID-19. Id. As of April 30, 2020, the SF Moratorium is set to expire either two months after that date, when the Proclamation of Local Emergency is Terminated, or upon further Order from the Mayor, whichever occurs first. Twelfth Supplement § 1(e).

The moratorium applies to all units in San Francisco, regardless of whether they are rent controlled, including single-family homes, new construction, and owner/master-tenant occupied units. Twelfth Supplement § 1(a)(i). Landlords are also prohibited from seeking to evict tenants based on nonpayment of late fees and interest due to missed rent payments, nonpayments of monies due under existing stipulations or payment plans, or failure to replenish or increase security deposits. Twelfth Supplement § 1(a)(ii).

Tenants are required to provide notice to their landlord they are unable to pay rent due to “financial impacts” related to COVID-19, and also provide supporting documentation. Twelfth Supplement § 1(a)(iii). “Financial impacts” means a substantial loss of household income due to business closure, loss of compensable hours of work or wages, layoffs, or extraordinary out-of-pocket medical expenses. Twelfth Supplement § 1(a)(iv). A financial impact is “related to COVID-19” if it was caused by the COVID-19 pandemic, the Mayor’s Proclamation, the Local Health Officer’s Declaration of Local Health Emergency, or public health orders or recommended guidance related to COVID-19 from local, state, or federal authorities. Id. Failure to provide the requisite notice and documentation to the landlord shall not affect a tenant’s ability to claim the protections of the SF Moratorium as an affirmative defense in an eviction action for non-payment. Twelfth Supplement § 1(a)(iii). Supporting documentation is required in court, however, but a court may waive this requirement if the documentation is unavailable. Id.

Nothing in the SF Moratorium relieves a tenant of the obligation to pay rent, nor restricts any remedy of the landlord other than to evict for non-payment. Twelfth Supplement § 1(a)(vi). Landlords and tenants are strongly encouraged to negotiate payment plans for past due rent. Twelfth Supplement § 1(a)(v). Payment plans may not shorten the six-



month repayment window set forth in the SF Moratorium or otherwise require a tenant to waive any of its protections. Id. Landlords may accept partial rent payments or temporarily discount the rent without affecting the maximum allowable base rent. Id. Landlords are strongly advised to consult with our office before negotiating any such agreements to ensure their rights remain secured and protected.

Landlords are not permitted to impose late fees or charge interest on any rent not paid due to financial impacts related to COVID-19. Twelfth Supplement § (1)(b). Landlords are also not permitted to impose a rent increase on any rent-controlled units either under an existing lease (including a lease modification) or through the renewal of an expired lease, until one month after the SF Moratorium expires or is terminated. If you have recently issued any rent increases or issued some in the past that are scheduled to take effect during the effective period of the SF Moratorium, our office can provide appropriate guidance.

No landlord may recover possession of a residential dwelling unit if the effective date of the notice of termination falls within two months after the date the SF Moratorium expires, unless the landlord can show that recovery is necessary due to violence, threats of violence, or health and safety issues. Twelfth Supplement § 1(c). The SF Moratorium's two-month ban on recovery of possession does not apply to Ellis Act evictions, unless and until the Governor or the State Legislature authorize such limitations during the state of emergency. Id.

SF Commercial Rent Eviction Moratorium

On March 18, 2020, the City of San Francisco issued a temporary moratorium on eviction for non-payment of rent by commercial tenants ("Commercial Moratorium"). The Commercial Moratorium is applicable to all businesses with gross income equal to or less than \$25 million (prorated for businesses that did not operate for the entire 2019 tax year). FOURTH SUPPLEMENT TO MAYORAL PROCLAMATION DECLARING THE EXISTENCE OF A LOCAL EMERGENCY DATED FEBRUARY 25, 2020 ("Fourth Supplement") § (a). If a commercial tenant is unable to pay rent due on or after March 17, 2020, the landlord must give the tenant written notice of the violation and a cure period of 30 days from the date the tenant receives the notice. Fourth Supplement § (b). Within that 30-day cure period, the commercial tenant has the option to either (1) pay the rent due pursuant to the notice, or (2) provide documentation showing the tenant is unable to pay the rent due to a financial impact related to COVID-19. Fourth Supplement § (c). A "financial impact" means a substantial decrease in business income due to illness or other disruption, reduced open hours or reduced consumer demand, or temporary closure of the business, including temporary closure required to comply with restrictions or in response to restrictions under the shelter in place or other orders of the SF Health Officer. Id. A financial impact is "related to COVID-19" if it is caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19. Id.

If the commercial tenant provides the landlord with documentation of the tenant's inability to pay rent due to a financial impact related to COVID-19, the 30-day cure period is then extended by one month.

Fourth Supplement § (d). The landlord and tenant must then discuss the matter in good faith to attempt to develop a payment plan for the tenant to pay the missed rent. Id. If the landlord and tenant cannot agree to a payment plan, the tenant must either pay the missed rent or provide new documentation before the end of the new cure period. Id. If the tenant provides the required documentation, the cure period then extends by one more month. Id. The tenant may continue to provide the required documentation each month for up to six months after the date the rent was originally due. Id. If the commercial tenant has not paid all outstanding rent at the end of the applicable cure period, the landlord may seek to evict the tenant for non-payment of rent. Id.

SF Rent Increase Moratorium

The San Francisco Board of Supervisors enacted a moratorium on rent increases ("Increase Moratorium") for rent-controlled units effective April 7, 2020. Under the Increase Moratorium, any rent increase subject to and otherwise permitted under the San Francisco Residential Rent Stabilization and Arbitration Ordinance ("Rent Ordinance") may not take effect for 61 days after the moratorium's enactment, subject to further amendments and extensions. Memorandum, Land Use and Transportation Committee, San Francisco Board of Supervisors (April 20, 2020) ("Memorandum") § 6. As a result, landlords may not issue rent increases under the Costa-Hawkins Rental Housing Act or by petition otherwise permitted under the Rent Ordinance. The Increase Moratorium does not affect or alter anniversary dates, and the San Francisco Rent Board may continue to hear and decide petitions in the interim. Memorandum § 2(a). Once the Increase Moratorium ends, landlords may reinstate any rent increases that were deferred by the moratorium by serving a new written notice on the tenant. Memorandum § 2(b).

Oakland Residential and Commercial Eviction Moratorium

The City of Oakland enacted its own moratorium on rent increases, late fees, and residential and commercial evictions for nonpayment of rent ("Oakland Moratorium") on March 27, 2020. The residential eviction protections of the Oakland Moratorium go beyond those of the SF Moratorium to prohibit all residential evictions except in situations where the tenant poses an imminent threat to the health or safety of other occupants. Oakland Moratorium § 3. Nothing in the Oakland Moratorium, however, relieves any tenant of liability for unpaid rent that became due during the local emergency. Oakland Moratorium § 9.

Regarding rent increases and late fees, no rent increases may exceed the CPI threshold set forth in the Oakland Municipal Code, which is currently 3.5%, unless such increases are required to provide a "fair return". Oakland Moratorium § 4. No late fees may be issued if rent becomes late for reasons resulting from the COVID-19 pandemic. Oakland Moratorium § 5. "Reasons resulting from the COVID-19 pandemic" include (i) the tenant becoming sick or incapacitated due to COVID-19, or the tenant complying with a recommendation from a governmental agency to self-quarantine; (ii) a substantial reduction



in household income because of a loss of employment or a reduction in hours, or because they were unable to work because they were caring for their children who were out of school or a household family member sick from COVID-19, or a family member complying with a recommendation from a government agency to self-quarantine; and (iii) the tenant incurred substantial out-of-pocket medical expenses caused by COVID-19. *Id.*

In unlawful detainer actions based on nonpayment of rent for commercial units leased to a small business or a nonprofit organization, a substantial decrease in income (including reduction of hours and consumer demand) caused by COVID-19 is an absolute defense to failure to pay rent during the local emergency. Oakland Moratorium § 6. No protections are presently afforded to businesses that do not qualify as a small business or nonprofit organization. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

Berkeley Eviction Moratorium

The City of Berkeley enacted its eviction moratorium on March 17, 2020. See Berkeley Municipal Code §§ 13.110 et seq. (“Berkeley Moratorium”). The Berkeley Moratorium applies to eviction for nonpayment of rent due to the COVID-19 crisis and all other no-fault evictions except for Ellis Act evictions and no-fault evictions necessary for the health and safety of tenants, neighbors, or the landlord. Berkeley Moratorium § 13.110.030(B). Evictions for other good cause may still be filed. *Id.*

Under the Berkeley Moratorium, Tenants are required to notify landlords in writing of their inability to pay rent due to financial impacts related to COVID-19 before the rent is due, but no later than 7 days after the rent is due. Berkeley Moratorium § 13.110.020. Tenants must also notify the landlord of any changes in their financial situation if it affects the amount they are able to pay in future months. There is no rent forgiveness under the Ordinance. Berkeley Moratorium § 13.110.040. The tenant must pay all unpaid rent that accrued during the local state of emergency within six (6) months after the expiration of the local emergency, but the landlord may not evict the tenant for failure to pay the accrued back-rent. The landlord also may not charge a late fee on the rent during the local state of emergency.

Berkeley tenants are required to provide written notification stating the ways in which they have been financially impacted by COVID-19 or any local, state, or federal government response, including, but not limited to a decrease in household income due to layoffs or reduction of hours, a decrease in income due to caregiving responsibilities (including childcare due to school closures), and a substantial material out-of-pocket medical expenses. Berkeley Moratorium § 13.110.030(A). Tenants must also provide supporting documentation either concurrent with the written notice or as soon as possible, including, but not limited to termination notices, payroll checks, pay stubs, bank statements, letters, emails, or texts from an employer or supervisor explaining the tenant’s changed financial circumstances; documentation of caregiving

responsibilities, including those related to school closures, and medical bills. *Id.*

Failure to obtain or provide verifiable documentation at the appropriate time may eliminate the tenant’s protections against being evicted under the Moratorium. Upon receiving notice and supporting documentation, a landlord may not seek to evict the tenant for the unpaid rent. Landlords may nevertheless request a waiver from the eviction moratorium within 30 days of receipt of the notice and documentation from tenant based on a discrete number of circumstances. If you have received notice and supporting documentation and believe you may be eligible for a waiver or require other legal advice, contact our office immediately.

Landlords may temporarily reduce or waive rent through written agreement without permanently reducing the amount of rent that can be charged for the unit at the end of the agreement. The written agreement must state that the reduction is (1) temporary, and (2) not related to market conditions, habitability, or a reduction in housing services. These agreements may be extended beyond the expiration of the local state of emergency if the landlord and tenant expressly agree to the duration in writing. Landlords should not enter into these agreements, however, without first consulting a qualified landlord/tenant attorney. Tenants may be able to recover damages and attorney’s fees if a landlord acts in knowing violation or reckless disregard of the Ordinance. Berkeley Moratorium § 13.110.080.

CA Anti-Rent Gouging Provision

The anti-rent gouging provisions of the California Penal Code (“CPC”) § 396 are a remnant from fire season that remain applicable to the present state of emergency related to COVID-19. Under CPC § 396, landlords may not issue any rent increases in excess of 10% unless the increase is justified by either the cost of repairs or amortized maintenance over the term of the rental. CPC § 396(b). Such justifiable rent increases over 10% now require 90 days’ notice. Best practices dictate serving these notices with a cover letter explaining that if the subject rent increase goes into effect while the state of emergency is still in effect, the landlord will reassess the increase.

Effects on Appraisal/Vendor Access and Showings

Under certain local health mandates, open houses for real estate sales are now permitted; however, it is recommended that showings should still be done virtually when possible. Realtors should establish a written COVID-19 plan to be following by agents when showing properties. Rules should be displayed for both the agents and those viewing the home and attendance should contingent upon compliance with those rules. The use of face coverings and hand sanitizer should be mandatory, and attendees should be instructed to maintain physical distance and avoid touching surfaces. Written rules should be made publicly available online, in MLS listings, and in full display at the time of showing. It is recommended to follow all CDC and local health mandates regarding public gatherings and group events.

Resolving Nonpayment and Other Tenant Issues

Countless issues continue to arise despite the applicable regulations and mandates. For non-payment issues, generally, clients are advised 2 options: either (1) negotiate and enter into a rent forbearance agreement with the tenant using the SFAA Form or a variation thereof; or (2) entering a Doe complaint for the missed rent at this time, and substitute the tenant once the applicable eviction moratorium expires.

The other most common issue is tenants simply breaking their leases and/or abandoning the property. This is happening all over the state and is especially common among students. Landlords should remember that tenants are contractually bound by the lease. To be released from their obligations, tenants must find a replacement tenant that the landlord finds is otherwise qualified to lease the unit. The landlord is not obligated to lease to any replacement the tenant may find. Clients are advised, however, to do what they can to maintain the lease and hold the tenant to its obligations. Clients are not advised to make rent payments optional or offer any rent reductions without first consulting our office and, if appropriate, receiving assistance with drafting the necessary forms and agreements.



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