COVID-19 Tenant Relief Act of 2020

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September 1, 2020

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For a quick overview on this topic, please see: **Quick Guide - The COVID-19 Tenant Relief Act of 2020**

Brief Summary of this Law

When a tenant has not paid rent for any period between March 1, 2020, and January 31, 2021, the COVID-19 Tenant Relief Act of 2020 ("Rent Relief Law") will allow most residential tenants to remain in the rental property through January of 2021 as long as the tenant makes a declaration under penalty of perjury that they are unable to pay their rent or meet other financial obligations because of circumstances related to the COVID-19 pandemic.

For rent that comes due between September 1, 2020, and January 31, 2021, the tenant is responsible for paying at least 25%. However, that amount need only be paid by January 31, 2021. Otherwise, the tenant would be at risk of being evicted for non-payment of rent through an unlawful detainer process, but not before February 1, 2021. After January 31, 2021, and with the exception of the 25% of rent owed from September through January, the landlord will not be able to base an unlawful detainer action on a demand for payment of rent that came due during any time between March 1, 2020, and January 31, 2021.

However, the balance of the unpaid rent is still owed. The Rent Relief Law permits a claim for the unpaid rent to be brought in small claims court, beginning March 1, 2021, even if the amount at issue would otherwise be more than the small claims court limits.

The Rent Relief Law temporarily requires all residential landlords in California to comply with the just cause eviction procedures of The Tenant Protection Act of 2019 (AB 1482) in order to find a tenant guilty of unlawful detainer on or after March 1, 2020 and before February 1, 2021. This is the case, even when the property would otherwise be exempt under AB 1482. However, an owner of a single-family property or condo can terminate a tenancy when they are in contract to sell the property to a buyer who will take occupancy.

The COVID-19 Tenant Relief Act of 2020 was part of Assembly Bill 3088 (AB 3088) which additionally includes an expansion of the Homeowner Bill of Rights. The expansion brings small landlords within its protections.

Lastly, included within AB 3088 is a requirement that loan servicers must follow federal guidance regarding the granting of a loan forbearance. Failure to do so violates California law giving rise to various state law remedies such as injunctions, claims for damage and restitution, and attorney fees.

COVID-19 Tenant Relief Act of 2020 in General

Q1. If tenant has not paid rent that came due between March 1, 2020 and August 31, 2020, will the landlord be able to evict the tenant on this basis through an unlawful detainer?

A1 . Generally, no. For most tenants, the law only requires that the tenant fill out a declaration under penalty of perjury stating that they are unable to pay their rent or meet other financial obligations because of decreased income or increased expenses due to the COVID-19 pandemic.

Q2. If the tenant has not paid rent that will come due between September 1, 2020, and January 31, 2021, will the landlord be able to evict the tenant on this basis through an unlawful detainer?

A2. The tenant will be required to pay 25% of the rent for this period, but only by January 31, 2021. Otherwise the answer to this question is the same as the answer to the first question. Practically, there is little difference since even if the rent is due and unpaid for, let's say, the month of November, the landlord would still not be able to obtain a judgment for possession through the unlawful detainer process since this amount could not actually be demanded until after January 31, 2021.

Q3. How is the landlord going to collect this unpaid rent?

A3. The landlord can go to court, including a small claims court, even if the amount of unpaid rent is more than the small claims court limit. However, the landlord may not attempt to recover any of the back rent through small claims court for this period before March 1, 2021.

Q4. Can the landlord ever collect this rent through an unlawful detainer process even after January 31, 2021?

A4. With the exception of the 25% of the unpaid rent from September 1, 2020, through January 31, 2020, the answer is no. To collect unpaid rent for this period, the landlord must follow the procedures as discussed in the rest of this Q&A. In general, rent for this period may only be collected as a personal debt unrelated to

possession of the property.

Q5. Can a landlord serve a 3-day notice pay rent or quit?

A5. Not if the rent being demanded is for rent that came due between March 1, 2020, and January 31, 2021. It must be a modified 15-day notice that includes, among other things, a copy of a declaration of COVID-19-related financial distress. See section below for specific requirements.

Q6. Is written documentation of the tenant's financial inability to pay the rent required to be provided to the landlord?

A6. Only if the tenant is a "high-income" tenant. Otherwise, no.

Q7. Are courts permitting unlawful detainer cases to proceed?

A7. For cases involving residential property which are based on nonpayment of rent or other charges, the suspension on the issuance of a summons on a UD complaint is extended through October 4th. However, UD cases that are not based on nonpayment of rent or other charges involving residential property or any UD case involving commercial property may proceed beginning September 2, 2020.

Q8. Does this law apply to commercial tenants?

A8. No.

Q9. Does this law apply to vacation rentals of 30 days or less?

A9. No.

Q10. Does this law apply to mobile homes in a mobile home park?

A10. Yes.

Q11. When does the Rent Relief Law expire?

A11. February 1, 2025.

Rent Relief Law Extends Judicial Council Freeze (Suspension) on Unlawful Detainers in a Limited Manner through October 4 for Residential Properties

Q12. In May of 2019, the Judicial Council suspended various types of court proceedings including unlawful detainers. When does that expire?

A12. It expires on September 1, 2020.

Q13. Does the Rent Relief Law extend the Judicial Council suspension of unlawful detainers?

A13. Yes, to a limited extent.

Q14. In what circumstance does the suspension on unlawful detainers apply?

A14. It applies to any action that seeks possession of residential real property if based, in whole or part, on an alleged default in payment of rent or other charges.

Q15. Does the suspension apply to commercial properties?

A15. No

Q16. Does the suspension apply to any other action to recover possession which is not based on non-payment of rent or other charges?

A16. No.

Q17. How does the suspension affect the unlawful detainer process?

A17. Under the suspension, a court may not issue a summons on a complaint for unlawful detainer, nor enter a default or a default judgment for restitution in an unlawful detainer, in any action that seeks possession of residential real property and that is based, in whole or in part, on nonpayment of rent or other charges.

Q18. Is there an exception for cases involving health or safety emergencies?

A18. No.

Q19. When does the suspension expire?

A19. The suspension is in effect through October 4. On the next day, October 5, a court may issue a summons or enter a default.

Notice Requirements

Q20. How many new separate legal notices does the Rent Relief Law create?

A20. It creates two completely new notices and four that require significant modification of existing notices as follows:

1) The notice to pay rent or quit must be significantly modified.
2) The notice to perform covenant or quit must be significantly modified if using it to demand COVID-19 rental debt. Both of these notices must be modified to include required statutory language. In fact, depending on when the rent being demanded came due, they will each have to be modified in two separate versions.
3) Each of the above notices may need an additional inclusion of a notice to "high-income" tenants.
4) A declaration form called "Declaration of COVID-19-related financial distress" which must be included with the above notices.
5) A general notice informing the tenants of their rights under the Rent Relief Law for tenants who are behind on rent for the period between March 1, 2020, and August 31, 2020. This notice must be delivered before September 30, 2020. If the landlord is serving a notice to pay rent or quit before September 30, 2020, then this general notice may be attached to the notice to pay rent or quit.

Q21. Can a landlord serve a 3-day Notice to Pay Rent or Quit?

A21. Not a standard 3-day notice as it is understood under current law. If the landlord is demanding rent that came due between March 1, 2020, and January 31, 2021, the notice has to be a significantly modified 15-day notice to pay rent or quit or a 15-day notice to perform covenant or quit (when demanding COVID-19 rental debt).

Q22. What must the modified notice include?

A22. For "COVID-19 rental debt" that became due between March 1, 2020 and August 31, 2020, the notice must be modified in the following ways:

1. The notice must be a 15-day notice excluding Saturdays, Sundays and other judicial holidays.

2. The notice must set forth the date that each amount became due.

3. The notice must advise the tenant that the tenant cannot be evicted for failure to comply with the notice if the tenant delivers a signed declaration stating that they are unable to pay the rent because of COVID-19 related financial distress.

4. The notice will include specific statutory language advising the tenant of their rights. This statutory language will vary depending on whether the rent due is for the period from March 1, 2020, through August 31, 2020, or whether the rent is due is for the period from September 1, 2020, through January 31, 2020.

5. An unsigned declaration of COVID-19-related financial distress form must be included with the notice.

Q23. On point #4 of the last question it says that the 15-day notice must include specific statutory language advising the tenant of their rights. What is that specific statutory language?

A23. There are two versions. One for the period where rent came due between March 1, 2020, and August 31, 2020, and one for the period where rent came due between September 1, 2020, and January 31, 2020.

For the first period, the specific statutory language that must be included in all notices to pay rent or quit or to perform covenant or quit (when demanding COVID-19 rental debt) states:

> "NOTICE FROM THE STATE OF CALIFORNIA: If you are unable to pay the amount demanded in this notice, and have decreased income or increased expenses due to COVID-19, your landlord will not be able to evict you for this missed payment if you sign and deliver the declaration form included with your notice to your landlord within 15 days, excluding Saturdays, Sundays, and other judicial holidays, but you will still owe this money to your landlord, If you do not sign and deliver the declaration within this time period, you may lose the eviction protections available to you. You must return this form to be protected. You should keep a copy or picture of the signed form for your records.
>
> You will still owe this money to your landlord and can be sued for the money but you cannot be evicted from your home if you comply with these requirements. You should keep careful track of what you have paid and any amount you still owe to protect your rights and avoid future disputes. Failure to respond to this notice may result in an unlawful detainer action (eviction) being filed against you.
>
> For information about legal resources that may be available to you, visit lawhelpca.org.

Q24. The notice above is for rent that became due between March 1 and August 31, 2020. Is there a similar notice for rent that become dues between September 1, 2020, and January 31, 2021?

A24. Yes. There is a similar notice, but it has been altered to reflect the fact that the tenant could be made to pay 25% of the rent that comes due for this period by January 31, 2021. The statutory notice is written out in full below.

> "NOTICE FROM THE STATE OF CALIFORNIA: If you are unable to pay the amount demanded in this notice, and have decreased income or increased expenses due to COVID-19, your landlord will not be able to evict you for this missed payment if you sign and deliver the declaration form included with your notice and minimum payment (see below) to your landlord within 15 days, excluding Saturdays, Sundays, and other judicial holidays, but you will still owe this money to your landlord, If you do not sign and deliver the declaration within this time period, you may lose the eviction protections available to you. You must return this form to be protected. You should keep a copy or picture of the signed form for your records.
>
> If you provide the declaration form to your landlord as described above AND, on or before January 31, 2021, you pay an amount that equals at least 25 percent of each rental payment that came due or will come due during the period between September 1, 2020, and January 31, 2021, that you were unable to pay as a result of decreased income or increased expenses due to COVID-19, your landlord cannot evict you. Your landlord may require you to submit a new declaration form for each rental payment that you do not pay that comes due between September 1, 2020, and January 1, 2021.
>
> For example, if you provided a declaration form to your landlord regarding your decreased income or increased expenses due to COVID-19 that prevented you from making your rental payment in September and October of 2020, your landlord cold not evict you if, on or before January 31, 2021, you made a payment equal to 25 percent of September's and October's rental payment (i.e., half a month's rent). If you were unable to pay any of the rental payments that came due between September 1, 2020, and January 31, 2021, and you provided your landlord with the declarations in response to each 15-day notice your landlord sent to you during that time period, your landlord could not evict you if, on or before January 31, 2021, you paid your landlord an amount equal to 25 percent of all the rental payments due from September through January (i.e., on and a quarter month's rent).
>
> You will still owe the full amount of the rent to your landlord, but you cannot be evicted from your home if you comply with these requirements. You should keep careful track of what you have paid and any amount you still owe to protect your rights and avoid future disputes. Failure to respond to this notice may result in an unlawful detainer action (eviction) being filed against you.
>
> For information about legal resources that may be available to you, visit lawhelpca.org."

Q25. Are there any other additional notice provisions that should be included in the 15-day notice?

A25. Yes. If the landlord has proof in their possession of the tenant's status as a "high-income" tenant (See below for a discussion of high-income tenants), then the landlord will want to include this additional notice.

> “Proof of income on file with your landlord indicates that your household makes at least 130 percent of the median income for the county where the rental property is located, as published by the Department of Housing and Community Development in the Official State Income Limits for 2020. As a result, if you claim that you are unable to pay the amount demanded by this notice because you have suffered COVID-19-related financial distress, you are required to submit to your landlord documentation supporting your claim together with the completed declaration of COVID-19-related financial distress provided with this notice. If you fail to submit this documentation together with

your declaration of COVID-19-related financial distress, and you do not either pay the amount demanded in this notice or deliver possession of the premises back to your landlord as required by this notice, you will not be covered by the eviction protections enacted by the California Legislature as a result of the COVID-19 pandemic, and your landlord can begin eviction proceedings against you as soon as this 15-day notice expires."

Q26. The above 15-day notices are for COVID-19 Rental Debt. What is that exactly?

A26. "COVID-19 rental debt" means unpaid rent or any other unpaid financial obligation of a tenant under the tenancy that came due between March 1, 2020, and January 31, 2021.

Q27. The Rent Relief Law requires modification of a 3-day notice to perform covenant or quit if demanding COVID-19 rental debt. How does a notice to perform covenant or quit demand "COVID-19 rental debt?"

A27. The requirement to provide a 15-day notice applies to any financial obligation even if demanded through a notice to perform covenant or quit. For example, let's say the landlord bills the tenant monthly for utilities that are paid for by the landlord. The landlord might then use a notice to perform covenant or quit to demand that the utility reimbursement be made which would qualify as a demand for rental debt.

Q28. Does a declaration form need to be included with the 15-day notice?

A28. Yes.

Q29. What is the exact language of the declaration form?

A29. Declaration of COVID-19-related financial distress

I am currently unable to pay my rent or other financial obligations under the lease in full because of one or more of the following:

1. Loss of income caused by the COVID-19 pandemic.

2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.

3. Increased expenses directly related to health impacts of the COVID-19 pandemic.

4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income.

5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.

6. Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of income and/or increased expenses.

Signed under penalty of perjury:

Dated:

Q30. What if the landlord fails to follow any of the above notice procedures involving a 15-day notice and inclusion of the declaration form?

A30. The Rent Relief Law would deem a notice that fails to comply with the above insufficient to support a judgment for unlawful detainer or serve as a basis for a default judgment.

Q31. If a standard 3-day notice to pay rent or quit was issued before the passage of this law, is it still valid?

A31. No. If the standard 3-day notice to pay rent or quit demanded rent that came due between March 1, 2020, and August 31, 2020, then it must be modified as per the above questions if it is to form the basis of an unlawful detainer.

Q32. What if the tenant has unpaid rent owing for the period between March through August of 2020, and also for the period between September 2020 through January 2021?

A32. Then the landlord would be obliged to serve both sets of notices. Both the notice that explains the obligation of the tenant to pay 25% of the rent for the period between September 1, 2020, through January 1, 2021, and the notice for the earlier period between March 1, 2020, through August 31, 2020.

Q33. One of the new notices is a general notice informing the tenants of their rights under the Rent Relief Law. What is the exact language of this notice?

A33. Here is the notice:

> "NOTICE FROM THE STATE OF CALIFORNIA: The California Legislature has enacted the COVID-19 Tenant Relief Act of 2020 which protects renters who have experienced COVID-19-related financial distress from being evicted for failing to make rental payments due between March 1, 2020, and January 31, 2021.
>
> "COVID-19-related financial distress" means any of the following:
>
> 1. Loss of income caused by the COVID-19 pandemic.
>
> 2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.
>
> 3. Increased expenses directly related to the health impact of the COVID-19 pandemic.
>
> 4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit your ability to earn income.
>
> 5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.
>
> 6. Other circumstances related to the COVID-19 pandemic that have reduced your income or increased your expenses.

This law gives you the following protections:

1. If you failed to make rental payments due between March 1, 2020, and August 31, 2020, because you had decreased income or increased expenses due to the COVID-19 pandemic, as described above, you cannot be evicted based on this nonpayment.

2. If you are unable to pay rental payments that come due between September 1, 2020, and January 31, 2021, because of decreased income or increased expenses due to the COVID-19 pandemic, as described above, you cannot be evicted if you pay 25 percent of the rental payments missed during that time period on or before January 31, 2021.

You must provide, to your landlord, a declaration under penalty of perjury of your COVID-19-related financial distress attesting to the decreased income or increased expenses due to the COVID-19 pandemic to be protected by the eviction limitations described above. Before your landlord can seek to evict you for failing to make a payment that came due between March 1, 2020, and January 31, 2021, your landlord will be required to give you a 15-day notice that informs you of the amounts owed and includes a blank declaration form you can use to comply with this requirement.

If your landlord has proof of income on file which indicates that your household makes at least 130 percent of the median income for the county where the rental property is located, as published by the Department of Housing and Community Development in the Official State Income Limits for 2020, your landlord may also require you to provide documentation which shows that you have experienced a decrease in income or increase in expenses due to the COVID-19 pandemic. Your landlord must tell you in the 15-day notice whether your landlord is requiring that documentation. Any form of objectively verifiable documentation that demonstrates the financial impact you have experienced is sufficient, including a letter from your employer, an unemployment insurance record, or medical bills, and may be provided to satisfy the documentation requirement.

It is very important you do not ignore a 15-day notice to pay rent or quit or a notice to perform covenants or quit from your landlord. If you are served with a 15-day notice and do not provide the declaration form to your landlord before the 15-day notice expires, you could be evicted. You could also be evicted beginning February 1, 2021, if you owe rental payments due between September 1, 2020, and January 31, 2021, and you do not pay an amount equal to at least 25 percent of the payments missed for that time period.

For information about legal resources that may be available to you, visit lawhelpca.org."

Q34. Do all tenants have to receive this general notice?

A34. No. Only those tenants who have unpaid rent that came due between March 1, 2020, and August 31, 2020.

Q35. When must this general notice be given to the tenant?

A35. On or before September 30, 2020. However, if the landlord is to deliver a 15-day notice to pay rent or quit or to perform covenant or quit (if COVID-19 rental debt is demanded) then the notice must be delivered before or at the same time as the 15-day notice.

Q36. How must this notice be delivered to the tenant?

A36. It can be mailed to the tenant, or it can be given in the same way that a 3-day notice to pay rent or quit is served.

Q37. Where can I find all of these new notices?

A37. C.A.R. is modifying its forms to comply with these new rules.

The Tenant's Response to the 15-Day Notice to Pay Rent or Quit and "High-Income" Tenants

Q38. If the tenant delivers back to the landlord a signed declaration, what is the effect of that?

A38. The tenant could not then be evicted through the unlawful detainer process. A tenant that returns back to the landlord a signed declaration of COVID-19-related financial distress "shall not then or thereafter be in default with regard to the COVID-19 rental debt" that came due between March 1, 2020, and August 31, 2020. (Civil Code Sec. 1179.03(g)).

For rent that came due between September 1, 2020, and January 31, 2021, the law says a "tenant shall not be guilty of unlawful detainer, now or in the future, based upon nonpayment of COVID-19 rental debt" (as long as 25% of it was paid before January 31, 2021). For this period, the law explicitly says that the landlord "may not initiate an unlawful detainer action before February 1, 2021."

It seems implicit that the landlord is not permitted to initiate an unlawful detainer action even in the first scenario. Since it would make little sense to allow the initiation of an unlawful detainer in one case but not the other. But the law is ambiguous on this point. (Compare CCP 1179.03(g)(1) to (g)(2)).

However, if the tenant is deemed "high-income" then the landlord may proceed in the unlawful detainer process where the tenant did not provide supporting written documentation along with the declaration. See below for what it means for a tenant to be high-income.

Q39. What if the tenant fails to return a signed declaration within 15 days? Can the landlord initiate an unlawful detainer action then?

A39. Yes. However, the tenant will be given the opportunity to submit a declaration within five days of receiving the summons that the failure to return the declaration to the landlord was based on mistake, inadvertence, surprise, or excusable neglect when shown at a noticed hearing. This hearing must be held separately from a normal unlawful detainer trial.

Q40. On what basis could the tenant claim to have experienced "COVID-19-related financial distress?"

A40. COVID-19 related financial distress can be based on either or both a loss of income or an increase in expenses including any of the following:

1. Loss of income caused by the COVID-19 pandemic.

2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.

3. Increased expenses directly related to health impacts of the COVID-19 pandemic.

4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member

directly related to the COVID-19 pandemic that limit the tenant's ability to earn income.

5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.

6. Other circumstances related to the COVID-19 pandemic that have reduced tenant's income or increased their expenses.

Q41. What if a tenant has received financial assistance?

A41. Receipt of financial assistance alone will not invalidate the tenant's declaration no matter the type. But the tenant is required to state under penalty of perjury that any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that they received since the start of the COVID-19 pandemic does not fully make up for their loss of income and/or increased expenses.

Q42. How may the tenant deliver the signed declaration form back to the landlord?

A42. (1) In person, if the landlord indicates in the notice an address at which the declaration may be delivered in person.

(2) By electronic transmission, if the landlord indicates an email address in the notice to which the declaration may be delivered.

(3) Through United States mail to the address indicated by the landlord in the notice. If the landlord does not provide an address pursuant to subparagraph (1), then it shall be conclusively presumed that upon the mailing of the declaration by the tenant to the address provided by the landlord, the declaration is deemed received by the landlord on the date posted, if the tenant can show proof of mailing to the address provided by the landlord.

(4) Through any of the same methods that the tenant can use to deliver the payment pursuant to the notice if delivery of the declaration by that method is possible.

Q43. Is the tenant required to provide written documentation to the landlord in support of their declaration?

A43. Only if the tenant is a "high-income" tenant. Otherwise, no.

Q44. What is a high-income tenant?

A44. A “high-income tenant” means a tenant with an annual household income of 130% of the median income, as published by the Department of Housing and Community Development in the Official State Income Limits for 2020, for the county in which the residential rental property is located. See this link for HCD median income by county: https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/Income-Limits-2020.pdf

However, a tenant that makes less than $100,000 can never be high-income regardless of what the median income in the county is.

In a county where the median household income is about $77,000 or less then all tenants with a household income of $100,000 or greater will qualify as high-income. However, in counties where the median

household income is $77,000 or more, it may be necessary to do calculations to figure out exactly where the threshold is. For example, Marin County has a median income of $143,100. 130% of this number equals $186,030. Therefore, in Marin County a tenant's household income would have to be $186,030 or greater before the tenant qualified as high-income.

Q45. Can a landlord demand proof of income in order to verify whether a tenant qualifies as high-income or not?

A45. No. Either the landlord already has such documentation in their possession before the 15-day notice was served, or they don't. Most likely this information would have been collected, if at all, at the time of the rental application. This law does not authorize a landlord to now demand proof of income from the tenant. Nor does it require the tenant to provide proof of income for the purposes of determining whether the tenant is a high-income tenant.

And if a landlord attempted to obtain confidential financial records from a tenant's employer, a government agency, financial institution, or any other source, then that confidential information could not be used as valid proof of income unless it was lawfully obtained by the landlord with the tenant's consent during the tenant screening process.

Q46. What type of proof of income can be used to establish that the tenant is high income?

A46. "Proof of income" means any of the following:

A tax return; W-2 forms; a written statement from a tenant's employer that specifies the tenant's income; pay stubs; documentation showing regular distributions from a trust, annuity, 401k, pension, or other financial instrument.; documentation of court-ordered payments, including, but not limited to, spousal support or child support or; documentation from a government agency showing receipt of public assistance benefits, including, but not limited to, social security, unemployment insurance, disability insurance, or paid family leave

Even what the tenant wrote on the rental application, if signed, can be used as proof in addition to any written statement signed by the tenant that states the tenant's income.

Q47. What type of written documentation is a high-income tenant required to provide to the landlord in support of their COVID-19-related financial distress?

A47. Any form of objectively verifiable documentation that demonstrates the COVID-19-related financial distress the tenant has experienced is sufficient to satisfy the requirements of written documentation including the proof of income, as described in the previous question; a letter from an employer; or an unemployment insurance record.

Q48. Before a landlord is permitted to demand written documentation from a high-income tenant is there any other type of notice that must be given?

A48. Yes. As stated in question #25, the 15-day notice must be modified to include a statement explaining among other things that the tenant is required to submit to the landlord documentation supporting the claim of COVID-19-related financial distress together with the completed declaration.

Q49. Does the landlord have to provide a translation of the Declaration of COVID-19 Related Financial Distress?

A49. Yes, if the lease was negotiated primarily in a either Tagalog, Spanish, Chinese, Vietnamese or Korean. The Department of Real Estate has provided a translation of all of the forms including the Declaration of COVID-19 Related Financial Distress; the notice sent to a "high-income" tenant; the 15-Day Notice to Pay Rent or Quit (for both the period between March 1, 2020, and August 31, 2021, and the period between September 1, 2020, and January 1, 2021); and the general advisory notice. See this link and this link.

Q50. On what basis may a landlord evict for non-payment of rent?

A50. Where the tenant did not return the declaration or when the rent demanded was not for the period between March 1, 2020, and January 31, 2021.

Q51. If the landlord believes the tenant is not telling the truth on the declaration form or has the ability to pay the rent (because, for example, the tenant has received rental assistance payments), can the landlord contest the validity of the tenant's declaration?

A51. The Rent Relief Act appears to foreclose the possibility of contesting the veracity of the tenant's declarations. Either the unlawful detainer cannot be filed in the first instance or a tenant will be deemed "not in default" based on returning the signed declaration itself. There is even a special hearing procedure which is to be held on an expedited basis separate from the trial merely for the purpose of permitting the tenant to plead a mistake in failing to return the declaration. If so proven, the unlawful detainer is to be dismissed.

Looking more closely at the language of the law, a tenant who returns back to the landlord a signed declaration of COVID-19-related financial distress "shall not then or thereafter be in default with regard to the COVID-19 rental debt" that came due between March 1, 2020, and August 31, 2020. (Civil Code Sec. 1179.03(g)).

For rent that came due between September 1, 2020, and January 31, 2021, the law says a "tenant shall not be guilty of unlawful detainer, now or in the future, based upon nonpayment of COVID-19 rental debt" (as long as 25% of it was paid before January 31, 2021). For this period, the law explicitly says that the landlord "may not initiate an unlawful detainer action before February 1, 2021."

It seems implicit that the landlord is not permitted to initiate an unlawful detainer action even in the first scenario. Since it would make little sense to allow the initiation of an unlawful detainer in one case but not the other. But the law is ambiguous on this point. (Compare CCP 1179.03(g)(1) to (g)(2)).

Absent from any of this is any procedure for contesting what should be an issue of fact. Until this is clarified, there will certainly be some judges who will dismiss any unlawful detainer action if the statutory declaration is signed.

Q52. The tenant is wealthy, and the property is renting at $50,000 a month. Can the tenant simply agree to waive the protections under this law?

A52. No. Any provision of a stipulation, settlement agreement, or other agreement entered into on or after the effective date of this law, including a lease agreement, that purports to waive its provisions is prohibited and is void as contrary to public policy.

Special Penalties Against Landlords Who Use Illegal Means to Evict a Tenant Who Has Provided a COVID-19 Declaration

Q53. Under what circumstance could a special penalty be levied against a landlord who uses illegal means to evict a tenant who has provided a COVID-19 declaration of financial distress?

A53. When a tenant has provided a COVID-19 declaration of financial distress, penalty damages could be awarded against the landlord if the landlord attempts to remove the tenant by interrupting or shutting off the utilities; changing the locks; removing the windows or doors; or removing the tenant's personal property.

Q54. How much could the landlord be liable for?

A54. At a minimum, penalty damages of at least $1,000 but no more than $2,000 (at the discretion of judge or jury) can be levied. This would be in addition to existing penalties of $100 a day for each day the landlord is in violation, but at a minimum, $250. The landlord could liable for actual damages and attorney fees, too.

The law awarding special damages is in effect only until February 1, 2021.

Q55. Is it illegal to retaliate against a tenant who has provided a COVID-19 declaration of financial distress by attempting to evict on a basis other than non-payment of rent?

A55. Yes. This law expands the type of acts which constitute "retaliation" to include bringing an action for unlawful detainer based on a cause of action other than nonpayment of COVID-19 rental debt for the purpose of retaliating against the lessee because the lessee has a COVID-19 rental debt.

Because of this new rule, a landlord who may have multiple reasons to evict a tenant for cause might be prudent to forego an eviction based on non-payment of rent and instead base the eviction on some other just cause reason in the first instance.

This expansion of retaliatory eviction expires on February 1, 2021.

The Statewide Just Cause Provisions of AB 1482 Extended To All Properties. Exception for Termination of Tenancy for Single-Family Properties and Condos for a Seller in Contract to a Buyer Who Will Take Occupancy.

Q56. What is the statewide just cause eviction law (AB 1482)?

A56. In January of 2020, the "Tenant Protection Act of 2019" (AB 1482), otherwise known as the statewide rent control and just cause eviction law, came into effect. It extends "just cause" evictions and rent control laws statewide. Under this law, a landlord cannot simply terminate a tenancy without a reason as previously allowed. The landlord, instead, may only evict for a limited number of specified "causes," which is how a typical local rent control law operates. However, there are a number of exemptions, including single-family properties and condos; new construction built within the last 15 years; and properties that had only been occupied for no more than 12 months. These types of properties and others are not subject to the just cause eviction law. Please see out Q&A "Rent Cap and Just Cause Eviction Law."

Q57. Under the tenant relief law which types of properties come within the just cause eviction rules?

A57. Effectively all residential properties temporarily do. A landlord may not pursue an unlawful detainer against a tenant for actions on or after March 1, 2020 and before February 1, 2021, unless the landlord complies with the just cause eviction rules. This includes even single-family properties and condos; new construction within the last 15 years; and properties that had only been occupied for no more than 12 months which would otherwise be exempt from AB 1482.

Q58. On what basis may an owner evict?

A58. Aside from evicting a tenant for nonpayment of rent or any other charge during the applicable period, a landlord must comply with the just cause eviction requirements of AB 1482. There are eleven specified "at-fault" reasons and four specified "no-fault" reasons.

However, under the new law, a landlord cannot evict on the basis of "substantial rehabilitation" which is one of the "no-fault" reasons under AB 1482 (unless for the purpose of maintaining habitability). Of course, neither can the landlord evict on the basis of nonpayment of rent. So, while this new law is in effect there are only ten "at-fault" reasons and three "no-fault" reasons.

If the landlord did terminate the tenancy for a no-fault reason, then this law does not require a landlord to assist the tenant to relocate through the payment of relocation costs if the landlord would not otherwise be required to do so pursuant to AB 1482 or any other law.

Q59. What about an owner of a single-family property or condo? Are there any situations in which the owner can evict without cause on 30 or 60-day notice on or after March 1, 2020 or before February 1, 2021?

A59. Yes, there is an exception for terminating the tenancy when the owner is selling a single-family property or condo to a buyer who will take occupancy.

Q60. How does an owner qualify for the exemption for single-family properties or condos where the seller is in contract to a buyer who intends to take occupancy?

A60. To qualify for the exemption the property must first be a single-family property or condo, and the owner cannot be a corporation, a REIT, or an LLC where one of the members is a corporation. The definitions here are a little technical. Not all single-family properties qualify. A single-family property where a unit or bedroom within the single-family property is rented out separately, does not necessarily qualify.

Secondly, the notice of exemption should be integrated into the lease. C.A.R.'s "Rent Cap and Just Cause Eviction" (Form RCJC) may be used for this purpose. Be sure that the box on the second page of the form is checked to claim the exemption.

Lastly, and most importantly, the owner must be in contract to sell to a buyer who intends to take occupancy.

If the owner has met these conditions, then the new law doesn't stop an owner from serving a notice to terminate tenancy. Even still, the owner should check any local eviction moratorium laws. Also, an owner of a single-family property secured by an FHA loan is currently prohibited from evicting a tenant.

Collection of COVID-19 Rental Debt

Q61. How is the landlord going to collect the unpaid rent that came due between March 1, 2020, and January 31, 2021?

A61. The landlord can go to court, including a small claims court, even if the amount of unpaid rent is more than the small claims court limit, and even if a person has filed more than two small claims court actions for more than $2500 within the same year.

Q62. When may a landlord sue in small claims court to recover COVID-19 rental debt?

A62. The landlord may not attempt to recover in small claims court any of the back rent for this period before March 1, 2021.

Q63. Can the landlord deduct the unpaid rent from the security deposit?

A63. Yes.

Q64. Can the landlord ever collect this rent that came due between March 1, 2020, and January 31, 2021, through an unlawful detainer process even after January 31, 2021?

A64. With the exception of the 25% of the unpaid rent from September 1, 2020, through January 31, 2020, the answer is no. In general, rent for this period may only be collected as a personal debt unrelated to possession of the property.

Q65. When do these special rules allowing for the collection of COVID-19 rental debt in small claims court expire?

A65. February 1, 2025.

Local Eviction Moratorium Preemption

Q66. My city has adopted an ordinance requiring special notices to be given as part of a 3-day notice to pay rent or quit. Are those still in force?

A66. No. This law preempts those notices.

Q67. Can a city or county make any change in their local eviction moratorium laws between August 19, 2020, and January 31, 2021?

A67. The thrust of this law is that a city cannot extend a tenant repayment period (for COVID-19 rental debt) beyond what was in effect before August 19, 2020.

If they attempt it, either the ordinance will have no effect, or if it doesn't specifically extend a repayment period, then it will have no effect before February 1, 2021.

In any event, this prohibition against changing up an ordinance in effect on or before August 19, 2020, does not apply to law requiring just cause for termination of residential tenancy.

Q68. What about a local ordinance that gives a tenant a specified amount of time to repay COVID-19 rental debt that was in effect on or before August 19, 2020? Is that still in effect?

A68. It depends. If the local ordinance required repayment on or before March 1, 2021, then that ordinance will remain in effect. However, if the repayment period commenced after March 1, 2021, or if the commencement of the repayment period was conditioned on the ending of state of emergency, whether state or local, then the repayment period is deemed to begin on March 1, 2021.

Q69. For how long can a city or county repayment period extend? Is there a maximum time?

A69. Yes. As stated, the period of time during which a tenant is permitted to repay COVID-19 rental debt may not extend beyond the period that was in effect on August 19, 2020. In addition, a provision may not

permit a tenant a period of time that extends beyond March 31, 2022, to repay COVID-19 rental debt.

Q70. What if the city or county adopts a just cause for termination of residential tenancy law after August 19, 2020?

A70. Even after August 19, 2020, a city or county may still extend, expand, renew, reenact, or newly adopt an ordinance that requires just cause for termination of a residential tenancy or amend existing ordinances that require just cause for termination of a residential tenancy. For example, if a city adopts an ordinance on September 1, 2020, prohibiting all no-fault termination of tenancies, that ordinance will be consistent with this Rent Relief Law.

UD Shielding Expanded

Q71. How has the Rent Relief Law expanded UD shielding?

A71. In 2017, a law came into effect which restricted the general public access to unlawful detainer filings to the circumstance where the landlord prevailed within 60 days of filing. The effect of shielding public access to UD filings was to impair the usefulness of credit reports in spotting a tenant with a history of being evicted through the unlawful detainer process. This law expands this public access limitation even further by eliminating public access even in those limited circumstances when the unlawful detainer action was filed between March 4, 2020, and January 31, 2021, and is based on the nonpayment of rent.

This law does contain a special exception for the news media to pull unlawful detainer data for the purpose of gathering "newsworthy facts" by a reporter or other persons in the press.

Expansion of the Homeowner Bill of Rights

Q72. What is the Homeowner Bill of Rights?

A72. The Attorney General of California explains the Homeowner Bill of Rights as follows:

The California Homeowner Bill of Rights is a set of laws that provide protections to homeowners who are facing foreclosure. It became law on January 1, 2013, with many sections renewed and modified as of January 1, 2019.

Key provisions include:

- **Notification of foreclosure-prevention options:** Your servicer must try to contact you at least 30 days[A1] before starting the foreclosure process to discuss your financial situation and explore your options to avoid foreclosure. Your servicer can then start the foreclosure process by recording a notice of default in the county where your home is located, and will then send you a copy within 10 business days. Within 5 days of recording a notice of default, your servicer must generally give you information about options to avoid foreclosure that may be available. (Civil Code sections 2923.55, 2924.9)
- **Guaranteed single point of contact:** If you ask for a loan modification or other foreclosure-prevention option, your servicer must assign you a specific person or team who can walk you through application requirements and deadlines, knows the facts and status of your application, including missing documents needed to complete your application, and can get you a decision on your application. (Civil Code section 2923.7)

- **Acknowledgment of application:** If you apply for a loan modification, your servicer must notify you within five business days of any missing information, other errors, and deadlines for completing your application. (Civil Code section 2924.10)
- **Restrictions on fees:** You cannot be charged a fee for applying for a loan modification. You cannot be charged late fees while your servicer is making a decision on your completed loan-modification application, while you are making timely payments under an approved modification, or while a denial is being appealed. Your application is "complete" once you submit all required information within the servicer's reasonable deadlines. (Civil Code section 2924.11)
- **Restrictions on dual tracking:** Your servicer must generally pause the foreclosure process while it is making a decision on your completed loan-modification application and until after it gives you time to appeal a denial. It also cannot foreclose on you while you are complying with the terms of an approved loan modification, forbearance, repayment plan, or other foreclosure-prevention option. (Civil Code sections 2923.6, 2924.11)
- **Denial rights:** If your servicer denies your loan-modification application, it must state its reasons and identify other possible foreclosure-prevention options in writing. It must also give you a chance to appeal the denial. You may submit a new loan-modification application if you have had a material change in your financial situation since the last application. (Civil Code section 2923.6)
- **Transfer rights:** If your servicer approves a loan modification or other foreclosure-prevention alternative and then sells or transfers your loan to another servicer, the new servicer must honor that foreclosure-prevention alternative. (Civil Code section 2924.11)
- **Verification of documents:** Your servicer must review certain foreclosure documents to make sure they are accurate, complete, and supported by reliable evidence about your loan, your loan's status, and the servicer's right to foreclose. (Civil Code section 2924.17)
- **Tenant rights:** Purchasers of foreclosed homes must give tenants at least 90 days before starting eviction proceedings. If the tenant has a fixed-term lease that was entered into before the foreclosure sale, the new owner must honor the lease unless certain exceptions apply. (Code of Civil Procedure section 1161b)

The Homeowner Bill of Rights generally applies to first-lien mortgages on owner-occupied homes that have no more than four units, and the protections above generally apply if your servicer foreclosed on more than 175 homes in the last year.

If you are having trouble making payments, contact your servicer to ask for help and keep following up with your servicer about any foreclosure-prevention application you submit. For more information about the foreclosure process, scams to watch out for, and resources that may help you, see Loan Modification Fraud and Foreclosure Rescue Scams.

If your servicer has violated the Homeowner Bill of Rights, you may want to consult a lawyer. Go to our Attorneys/Lawyers page for information on how to find a lawyer or a legal aid organization. You can also report violations to the Attorney General's Office. The Office cannot give legal advice, but filing a consumer complaint is helpful because it alerts the Office to consumer issues and may help with the Office's investigations. You can also report violations to the Department of Business Oversight and to the Consumer Financial Protection Bureau.

Q73. How has the Homeowner Bill of Rights been expanded to include small landlords?

A73. Previously, the protections of the Homeowner Bill of Rights applied only to a first lien mortgage or deed of trust that is secured by owner-occupied residential real property containing no more than four

dwelling units.

Under the expanded law, the Homeowner Bill of Rights will apply to "small landlords" even if not owner-occupied as long as the property is 1) The tenant's principal place of residence 2) A lease was negotiated at arm's length before and in effect on March 4, 2020, and 3) Where the tenant is unable to pay the rent due to a reduction in income resulting from the novel coronavirus.

Q74. Who qualifies as a "small landlord?"

A74. A small landlord means an individual who owns no more than three residential real properties, or one or more individuals who together own no more than three residential real properties, each of which contains no more than four dwelling units.

Q75. When do these protections expire?

A75. January 1, 2023.

Loan Servicer Forbearance: The Requirement to Follow Federal Guidance and Notice Procedures

Assembly Bill 3088 also requires a mortgage servicer to comply with applicable federal guidance regarding borrower options following a COVID-19 related forbearance. Failure to do so violates California law.

There are additional notice rights if a mortgage servicer denies forbearance. If so, they must state the reasons for that denial if the borrower was both current on payments as of February 1, 2020, and is experiencing a financial hardship that prevents the borrower from making timely payments on the mortgage obligation due, directly or indirectly, to the COVID-19 emergency.

Q76. How does this law protect borrowers?

A76. First and foremost, it requires mortgage servicers to follow applicable federal guidance regarding COVID-19 related forbearance.

For example, if the loan is backed by Fannie Mae, Freddie Mac, FHA, VA or the USDA, then the mortgage servicer must follow forbearance guidance from those entities and failure to do so violates California law. In this way, a separate legal right under California law is created which would entitle the borrower to injunctive relief, damages, restitution and attorney fees.

Even if the loan is not a federally backed loan, the mortgage servicer would be deemed in compliance only if they "review a customer for a solution that is consistent with the guidance to servicers" following the aforementioned entities.

Q77. Which type of borrowers do these protections apply to?

A77. In general, this law protects only natural persons and does not apply to property owned by corporations, REITs or LLC where a member of the LLC is a corporation.

Q78. What other protections are offered by this law?

A78. If the mortgage servicer denies a forbearance request, they are required to explain why if the request was made before April 1, 2021.

Q79. When is the mortgage servicer required to do this?

A79. Only if 1) the borrower was current on payment as of February 1, 2020 and, 2) The borrower is experiencing a financial hardship that prevents the borrower from making timely payments on the mortgage obligation due, directly or indirectly, to the COVID-19 emergency.

Q80. What is the mortgage servicer specifically required to explain?

A80. (1) Specifically identify any curable defect in the written notice.

(2) Provide 21 days from the mailing date of the written notice for the borrower to cure any identified defect.

(3) Accept receipt of the borrower's revised request for forbearance before the aforementioned 21-day period lapses.

(4) Respond to the borrower's revised request within five business days of receipt of the revised request.

Q81. Is there an exception to the notice requirement?

A81. Yes. If the loan is federally backed, then compliance with the CARES Act will be deemed compliance with this law. Although**,** the CARES Act expired in July, it's provision would still permit a borrower to request extension on a previously approved forbearance up to 180 additional days.

Q82. Can any of the above rights be waived?

A82. No.

Q83. Where can I obtain additional information?

A83. This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org/legal .

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