



EDC LEGAL ALERT: Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020

Background

On August 31, Governor Newsom signed the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (the “Act”), urgency legislation that immediately went into effect on September 1. The Act provides temporary relief for financially distressed residential tenants, homeowners and small landlords to avoid widespread evictions and foreclosures due to COVID-19 financial hardships. The California legislature introduced the law as a stop-gap measure to fill a void in protection created by the Judicial Council of California’s August 13 vote to repeal, effective September 1, temporary emergency orders prohibiting evictions and unlawful detainer summonses. The orders were previously set to expire 90 days after the end of Governor Newsom’s emergency period (September 31) or the council’s amendment/repeal of the orders, whichever occurred first.

Although the Act provides some relief for residential landlords and tenants including mobile home tenants and assessor dwelling unit rentals, the Act does not include protections for commercial landlords and tenants, who must rely continue to rely on existing state law, local eviction moratoriums and legal advice for guidance.

The act is quite comprehensive and amends various provisions of existing California law, and adds new provisions such as the Tenant Relief Act of 2020 (the “Tenant Relief Act”) and the COVID-19 Small Landlord and Homeowner Relief Act of 2020 (the “Homeowner Act”), discussed below.

Tenant Relief Act:

The Tenant Act generally provides residential tenants with eviction relief for nonpayment of rent due to COVID-19 financial distress for unpaid rent due during the period of March 1, 2020 to January 31, 2021.

The Tenant Relief Act increases the “pay rent or quit” notice period from 3 days to 15 days (excluding weekends and holidays). Landlords must serve the notice along with an unsigned statutory “declaration of COVID-19 related financial distress” (see Code of Civil Procedure Section 1179.02(d) [here](#)). The act contains specific requirements for landlords and tenants for two separate time periods, the first being unpaid rent due during March 1 and August 31, 2020, and the second for unpaid rent due during September 1, 2020 and January 31, 2021.

For unpaid rent due during the first period of March 1 and August 31, 2020, if the tenant provides the landlord with a signed copy of the declaration within the notice period, the tenant cannot be evicted for failure to pay rent. For unpaid rent due during the second period of September 1, 2020 and January 31, 2021, a tenant who provides the landlord with the declaration within the notice period **and** pays 25% of the past due rent cannot be evicted for nonpayment of rent. Residential tenants who do not provide the declaration in a timely manner can be evicted for nonpayment of rent; however, courts may provide tenants with a grace period to submit the declaration and pay the 25% of past due rent.

The act requires residential landlords to provide additional information in the “pay rent or quit” notice, including an advisory that the tenant won’t be evicted for failing to comply with the notice if the tenant provides the landlord with the signed declaration within the notice period. The tenant is not required to provide documentation of the COVID-19 financial distress (but may be required to do so under local ordinances). A notice that doesn’t comply with the requirements will be deemed void and insufficient to support an unlawful detainer judgment or to terminate a mobilehome tenancy under California’s Mobilehome Residency Law.

Although most tenants don't have to provide documentation, the Tenant Relief Act allows residential landlords to require "high-income tenants" (over \$100K household income or over 130% of median household income, whichever is greater) to provide documentation of COVID-19 related financial distress.

The act prohibits courts from engaging in certain unlawful detainer actions, such as issuing an unlawful detainer summons or entering a default judgment based on nonpayment of rent, until October 5, 2020. It also prohibits landlords from initiating unlawful detainer actions and prohibits courts from finding tenants guilty of an unlawful detainer until February 1, 2021, subject to certain exceptions.

The Tenant Relief Act sunsets on February 1, 2025.

The Homeowner Act:

The Homeowner Act requires mortgage servicers (defined) to provide borrowers who were denied forbearance programs with a specified written notice stating the reason for the denial, if the borrower was current on mortgage payments as of February 1, 2020 and is experiencing a financial hardship directly or indirectly due to COVID-19 that prevented the borrower from making mortgage payments. The mortgage servicer is also obligated to follow federal guidelines regarding borrower options after a COVID-19 related forbearance.

General Provisions

The Act doesn't waive unpaid rent; tenants are required to eventually pay the rent back. Unpaid rent due between March 1, 2020 and January 31, 2021 due to COVID-19 financial distress is not a basis for eviction, but may be recovered by landlords in small claims court (owed to the landlord as consumer debt). The Act provides small claims courts with expanded jurisdiction for landlords to sue for "COVID-19 rental debt." Landlords are not limited by the current cap on small claims court amounts or the current number of actions that may be brought per year when seeking recovery of COVID-19 rental debt. Landlords may sue to recover the debt in small claims court starting on March 1, 2021 and ending on February 1, 2025.

"Just cause" eviction actions (reasons other than nonpayment of rent such as nuisance, health and safety, and other lease violations) may commence on September 2, 2020. "Just cause" protections for certain residential tenants under the Tenant Protection Act of 2019 (AB 1842) have been extended to all residential tenants until February 1, 2021.

The Act extends existing foreclosure and deed of sale protections for certain owner-occupied residential properties to *tenant-occupied* residential properties that meet certain criteria, including the requirement that the tenant can't pay rent due to a reduction in income due to COVID-19. The Act also caps rent increases on certain residential properties with exceptions, and requires the California Business, Consumer Services and Housing Agency (consulting with the Department of Finance) to engage residential tenants, landlords and other stakeholders on strategies to direct potential future federal stimulus funding in the most efficient and effective manner.

The act allows local evictions ordinances to remain in effect until they expire, but future ordinances must be consistent with the Act, including the repayment periods. If an existing local ordinance has a repayment period for unpaid rent due between March 1, 2020 and January 31, 2021, the repayment period must begin no later than March 1, 2021 and be completed by March 31, 2022. Local ordinances can require "just cause" evictions (see below) consistent with state law, as long as it does not affect payments due between March 1, 2020 and January 21, 2021.

The Act has other provisions, such as prohibitions on illegal lockouts, retaliatory evictions, protections for mobilehome tenancies, a requirement to provide the declaration in languages other than English if the lease was negotiated in another language, and prohibitions on eviction if the tenant has good cause why the declaration wasn't provided within the 15 day notice period. The law applies to all cities and counties in California, including charter cities.

The Act doesn't apply to any rent due after January 31, 2021. The entire Act sunsets on February 1, 2025.

Additional Information

The Centers for Disease Control and Prevention issued a September 1, 2020 Order effective through December 31, 2020, temporarily ceasing residential evictions to prevent the spread of COVID-19. Tenants must sign a declaration to qualify for the protections under the Order. More information can be found [here](#).

Additionally, residential tenants and landlords should be aware of AB 1436, a California assembly bill working its way through the legislature that provides additional protections for residential tenants, small landlords and homeowners.

Conclusion

The Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 provides residential tenants, small landlords and homeowners with immediate but temporary eviction relief. Residential landlords and tenants and homeowners should become familiar with the new law's protections and requirements, monitor the progress of AB 1436, and continue to negotiate unpaid rent and lease terms with the assistance of an attorney, if appropriate. Commercial landlords and tenants should continue to review local eviction ordinances, negotiate lease terms whenever possible, and seek the advice of an attorney.