

BORNSTEIN LAW

COVID-19 Crisis Landlord-Tenant Considerations

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- ❑ **Covid - 19 - Status regarding Rental Properties**
- ❑ **State Moratorium / Courts**
- ❑ **Berkeley Considerations**
- ❑ **Best Practices for Landlords/ Courts Closed**

California Gov. Newsom declares statewide moratorium on evictions for renters hit by coronavirus

- ▶ Under this rule, landlords cannot evict nonpaying tenants in the state if they are affected by the coronavirus pandemic by prohibiting "enforcement of evictions by law enforcement or courts"
- ▶ The order will remain in effect through May 31, with a requirement that tenants must declare in writing to landlords that they cannot pay rent due to the coronavirus outbreak.
- ▶ If tenants fail to repay rent accrued during the moratorium, landlords will maintain the ability to evict after the enforcement is lifted.

Courts Closed to Landlords throughout California

Judicial Council of California - Latest

- ▶ All unlawful detainer actions suspended - **for 90 days after Covid-19 state of emergency ends**

New Rules approved :

1. Suspend the issuance of a summons in a UD action
2. Prevent entry of default and/or default judgments in UD cases
3. UD Trials set no earlier than 60 days after request for a trial
4. All trials on calendar as of April 1st will be continued at least 60 days

Unless there is a health and safety reason

Covid 19 Temporary Eviction Moratorium Berkeley

Under this moratorium on evictions **a landlord cannot evict or attempt to evict a tenant** if either of these requirements is met:

1. The tenant is unable to pay rent on commercial or residential property because of a “Covered Reason for Delayed Payment”; or
2. A no-fault eviction may not occur from a residential property unless necessary for the health and safety of tenants, neighbors, or landlord.

Landlord may not serve any notice of failure to pay rent or initiate or prosecute an unlawful detainer action based on a 3-day notice to pay or quit if aware of Tenant’s inability to pay some or all rent due to financial impacts related to COVID-19.

- ▶ Tenant must notify landlord by email or text communication of inability to pay because of lost income and inability to pay.
- ▶ Tenant also must provide documentation to support the reasons for nonpayment resulting from a COVID-19-related impact.

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Tenant's notification must be sent to Landlord or Landlord's representative with whom there previously was communication.

If Tenant does not provide Landlord with notice that rent is late:

- ▶ Landlord must serve a **“pre-notice”** of the rent delinquency and the amount; and
- ▶ Tenant then has at least three days – *not* including weekends and holidays – to provide Landlord with the notice and documentation.

If Tenant still does not give notice, Landlord may then serve a 3-day notice to pay or quit.

- ▶ Berkeley ordinance states that Tenant still may **raise the ordinance as a defense to a payment of rent eviction.**

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For privacy reasons, Landlord must hold the financial or medical information in confidence and not disclose it to others, unless:

- ▶ permitted or required by law; or
- ▶ Tenant gives his or her written consent.

“Covered Reason” for Delayed Payment

- ▶ If nonpayment of rent:
 - ▶ Material decrease in household or business income
 - ▶ Includes decrease in household income because of COVID-19-related layoffs or reduction in paid hours worked
 - ▶ Caregiving responsibilities
 - ▶ Material decrease in business income by shorter/no business hours or lack of consumer demand.
 - ▶ Material out-of-pocket medical expenses.
 - ▶ Income decrease or out-of-pocket medical expenses are caused by:
 - ▶ impact of COVID-19 pandemic; and/or
 - ▶ documented government response to COVID-19.

Collection of Back Rent

- ▶ Moratorium on eviction notices and unlawful detainers applies to notices served between March 17 and once the State of Emergency has been lifted.
- ▶ Landlord may seek unpaid rent immediately after the local State of Emergency is lifted.
 - ▶ Landlord may not charge a late fee for unpaid rent pursuant to the Emergency Response Ordinance.
- ▶ Landlord may not **(ever?)** seek eviction because of tenant's failure to pay rent during the State of Emergency because of the financial or health impact of COVID-19. **[This portion of the ordinance is ambiguous or unintelligible]**
- ▶ City of Berkeley is developing standards or guidelines for tenants to repay the rent delayed because of the State of Emergency.

Landlord's Remedies

- ▶ Landlord may request a hardship waiver or modification:
 - ▶ Apply to City Manager or designee
 - ▶ Enforcement would be a hardship to Landlord or other tenants
 - ▶ Would be an unconstitutional taking of Landlord's property.
- ▶ Landlord bears the burden of proving the facts supporting the hardship waiver or modification, and must also show the legal basis for the request.

If Landlord violates Covid-19 Ordinance

Tenant may seek:

- ▶ Injunction
- ▶ Money damages if
 - ▶ Landlord knowingly violates ordinance, or
 - ▶ Recklessly disregards the ordinance.
- ▶ Reasonable attorney's fees and costs.
- ▶ Other remedies allowed by law.
- ▶ Tenant may raise the Ordinance as a defense to eviction that violates the Ordinance.

General recommendations

What to Do as a Landlord While Tenants Are Protected

- Document and preserve a copy of all letters you sent to the tenant requesting rent;
- Document and preserve a copy of all letters from the tenant notifying you of their inability to pay some or all of the rent due to the COVID-19 pandemic;
- Do not take any action against a tenant until at least May 31, 2020, unless Gov. Newsom amends or rescinds his order;
- After May 31, 2020, review your local government's ordinances to confirm COVID-19 protections are lifted;
- Send a letter to your tenant to request rent payment and any documentation he/she has that permitted he/she to delay rent payment per COVID-19 exceptions;
- Check your local government's ordinances to determine the time frame the tenant has to pay you back rent; and
- File an unlawful detainer action if the tenant still refuses or cannot pay rent after the COVID-19 protections are lifted under both Gov. Newsom's order and your local government's ordinances.

COVID-19 Virus in your building

- ❖ Alert tenants to the presence of the virus, without divulging the name of tenant or the rental unit because of privacy concerns. Urge extra precautions without inciting panic.
- ❖ Continue and amplify educational outreach about the virus, and thoroughly clean/disinfect common areas.
- ❖ We have correspondence already prepared.

THANK YOU!

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