

New Legal Protections for California Tenants in the Wake of COVID-19



Objectives

- Obtain a general overview of the eviction protections under the Tenant Protection Act of 2019
- Learn about current eviction and rent protections available to California tenants under the COVID-19 Tenant Relief Act of 2020
- Acquire an understanding of additional local eviction protections available to tenants in Alameda County under the Alameda County Eviction Moratorium

Tenant Protection Act of 2019

- **Statewide Just Cause** required for termination of tenancy of more than 12 months' duration* (assumes that new tenants are not subsequently added)
- **EXEMPT UNITS**: dorms, owner (continuously) occupied duplexes, single family homes not owned by a corporation or LLC, mobile homes, certain affordable housing, housing shared with owner (lodger), single family owner occupied where no more than 2 units/bedrooms rented, hotels and hospitals- These units are NOT covered
- **NOTE**: Non-corporate, non-LLC owners of single-family homes must inform the tenant in writing that the unit is exempt from state just cause laws in order to avail themselves of the above exemption. If tenancy began after July 1, 2020, said notification must be included in the lease itself

Tenant Protection Act of 2019 (cont'd)

Permissible or “just cause” grounds for eviction include:

- **“At Fault”** - Nonpayment of rent, nuisance, waste, lease breach, criminal activity, use of the unit for an unlawful purpose, refusal to allow Landlord entry for legally authorized reason (e.g. to make necessary or emergency repairs), assigning or subletting the unit in violation of the lease, refusal to sign a new lease/ renewal lease that is materially the same as the prior lease, and failure to deliver possession of unit after submitting a notice to vacate
- **“No Fault”** - Owner move-in, substantial rehab, red-tagged building, demolition, and removal from the rental market

Tenant Protection Act of 2019 (cont'd)

- Additional protections:
 - 1) **Relocation benefits**: One month's rent or waiver of last month's rent for no fault eviction – e.g. owner move-in, substantial rehab, red-tagged building, demolition, and removal from the rental market. Must be paid within 15 days of notice
 - 2) **Section 8 discrimination barred**: Landlords may no longer refuse rental applications based on the prospective tenant's receipt of section 8 housing subsidies

Tenant Protection Act of 2019 (cont'd)

Statewide Just Cause – CAVEATS:

- **Local Just Cause Ordinances** -Cities such as Oakland, Berkeley, Hayward, and Alameda – have local just cause ordinances that offer stronger protections for covered tenants than what state law provides. These stronger protections continue to apply to covered tenants in these cities.
- **Just cause is required for all evictions until February 1, 2021 – per new state law (AB 3088)***
 - 1) ALL tenants are covered regardless of where they live or how long they have rented the unit
 - 2) No-cause evictions are **NOT** permitted against any tenant during this time

Hypothetical I

Mayra and her family have been living in a unit located in a duplex, which was constructed in 2003, for more than 2 years. There is no other tenant living in the other unit but the owner of the duplex, Mr. Vaughn, uses the neighboring unit as a weekend home. Recent gentrification in Mayra's neighborhood has motivated her landlord to try to persuade her to move out so that he can either rent the unit at a higher rate or to sell the duplex to a prospective buyer who can offer a lucrative price. Mayra has refused to leave as she cannot afford to move further away from her workplace. The landlord thus issued Mayra a 60-day eviction notice indicating to her that he needed her to leave as he was placing the property for sale.

Poll 1

Can the landlord evict Mayra for the stated reason under state law?

- A. Yes, the landlord, as a single private landlord, is exempt from just cause laws
- B. Yes, as the unit is in a duplex in which the owner occupies the adjacent unit, it is therefore exempt from state just cause laws.
- C. Yes, the landlord may justifiably base his desire to sell the duplex as a legal basis to evict
- D. No, state just cause laws apply and would prohibit Mr. Vaughn from evicting Mayra and her family for the stated reason

COVID-19 Tenant Protection Act of 2020 (AB 3088)

Restrictions on evictions for rent unpaid between March 1, 2020 and August 31, 2020:

- Tenants cannot be evicted for nonpayment of rent for the above period if they return a newly introduced hardship declaration within the newly enacted 15-day nonpayment notice period (see below)
- For this period -the declaration must be returned only one time
- If the hardship declaration is returned in time, NO eviction can be filed

COVID-19 Tenant Protection Act of 2020 (AB 3088) cont'd

New Notice Requirements: As of September 1, 2020, LLs must now issue a 15-day notice to pay to tenants when they fail to pay rent – **NO more 3-day notices until 2/1/2021**

- The 15-day notice must include:
 - A hardship declaration for tenants to return within 15 days if they have COVID-related financial distress
 - Information about tenant rights under AB 3088
- The 15 days does not include weekends or holidays

COVID-19 Tenant Protection Act of 2020 (AB 3088) cont'd

What constitutes a COVID-related hardship?

1. Loss of income caused by COVID-19
2. Increased out-of-pocket expenses directly related to performing essential work during COVID-19
3. Increased expenses directly related to the health impact of COVID-19
4. Childcare responsibilities or care for an elderly, disabled, or sick family member directly related to COVID-19 that limit ability to earn income.
5. Increased costs for care described above.
6. Other circumstances related to the COVID-19 pandemic that have reduced your income or increased your expenses

COVID-19 Tenant Protection Act of 2020 (AB 3088) cont'd

What about the unpaid rent?

- The rent debt owing between March 1, 2020 and January 1, 2021 is NOT a ground for eviction **IF** the tenant meets the applicable requirements
- The unpaid rent is converted to a consumer debt – recoverable in Civil or Small Claims Court
- No documentation of financial distress is required if tenant has annual household income less than \$100k
- Beginning October 5, 2020, tenants who do not return the hardship declaration can be evicted for nonpayment of rent **(Alameda County Tenants may still enjoy separate eviction protections, however).****

COVID-19 Tenant Protection Act of 2020 (AB 3088) cont'd

For rent unpaid between September 1, 2020 and January 31, 2021: Tenants cannot be evicted for nonpayment if they return the declaration each month rent is owing and pay 25% of missed rent payments by January 31, 2021

- The declaration must be served on landlord each month but the 25% of rent does not need to be paid so long as the total is paid by January 31, 2021
- If tenant paid the 25% back rent any remaining rent due after January 31, 2021 is converted to civil debt
- Even if the tenant pays nothing for September – January, so long as they return the declaration no eviction for nonpayment can be filed until February 1, 2021

COVID-19 Tenant Protection Act of 2020 (AB 3088) cont'd

New Eviction Protections under AB3088:

- Until February 1, 2021:
 - Just cause is required for all evictions – and ALL tenants are covered regardless of where they live or how long they have rented the unit
 - No-cause evictions are NOT permitted against any tenant
- If a landlord files an eviction against a tenant based on something other than nonpayment of rent, they cannot collect rental damages due between March 2020 and January 2021

COVID-19 Tenant Protection Act of 2020 (AB 3088) cont'd

CAVEATS:

Eviction moratoria passed by local CA municipalities **PRIOR** to the passage of AB 3088 and which provide greater protections than those included in the state law, are for the most part still enforceable (subject to some exceptions*)

Alameda County Eviction Moratorium

- Moratorium invalidates all eviction notices served or expiring during moratorium period, except for:
 - Allegations of imminent health and safety threats (not COVID related)
 - Ellis Act (removal from rental market)
 - If pursuant to court order or government agency (red tagging)
- No future evictions for rent accrued during moratorium if tenant provides documentation of COVID-19 basis for nonpayment*
- Applies to all cities in Alameda County
- Moratorium period lasts from March 24, 2020 to February 28, 2021, **OR** for 60 days after the local state of emergency has been lifted (whichever date is later)

Alameda County Eviction Moratorium (cont'd)

Documentation of COVID-Related Basis for Nonpayment*:

- Employer letter citing Covid-19 as a reason for reduced work hours, termination, or other substantial reduction in pay;
 - Paycheck stubs showing pay reduction after Covid-19 lockdown;
 - Bank statements showing income reduction after Covid-19 outbreak;
 - Documentation showing substantial out-of-pocket medical expenses caused by Covid-19;
 - Documents showing school/ childcare closures that affect work hours;
- A sworn statement (declaration) by you attesting to loss of income, including facts showing loss and stating that you are not able to gather the other documentation

***Note:** Alameda County Residents are not required to submit the state law declaration under AB3088 in order to be protected under the local moratorium. But out of an abundance of caution they should still submit it

Alameda County Eviction Moratorium (cont'd)

Provisions for unpaid rent:

- Any rent due within the moratorium period, but that is unpaid due to reasons related to COVID-19 as defined in the ordinance, converts to a “**consumer debt**”
- A landlord may not evict a tenant in the future for this consumer debt. Rather, they must collect debt through collections, limited civil or small claims court.

Hypothetical II

Ricardo rents a studio apartment located in Hayward, CA. In July of 2020, Ricardo lost his job at a bakery due to slowed business related to COVID-19. He has been unable to pay the full \$1500 monthly rental amount to the landlord. Ricardo wrote the landlord a letter explaining his circumstances and offered to pay 1/3 of the rent until he is able to locate another job. The landlord refused to work with Ricardo and issued him a one-page, 3-day notice to pay rent or quit, which demanded that he pay past due rent that has accumulated from July to December 2020. No other documents were attached to the notice. Ricardo was unable to pay the rent demanded and the 3-day notice period has now expired.

Poll 2

Can the landlord validly move forward with evicting Ricardo based on the above facts?

- A. No, the landlord is not allowed to use a 3-day notice to pay or quit to evict a tenant for nonpayment of rent
- B. No, the landlord failed to attach a mandatory COVID-19 declaration
- C. No, as Ricardo's inability to pay rent is directly linked to COVID-19, he has cognizable affirmative defenses to this eviction action under both the California and Alameda County eviction moratoria
- D. All of the above

BayLegal's Housing Law Services

- The Alameda County office assists over 1,500 clients per year with housing related issues – by phone or in person.
- **FREE Legal Assistance and Representation:** BayLegal can help eligible individuals with housing related legal issues, e.g., evictions, subsidy terminations, housing denials, reasonable accommodation and fair housing issues.
- **Tenant Rights Line: (888) 382-3405** – for Alameda County Residents currently experiencing housing-related legal issue.
- Also, BayLegal has a general **Legal Advice Line – (800) 551-5554** – for low income Bay Area residents in need of legal advice or assistance with Housing, DV, Public Benefits, Health Access, Re-entry, Consumer or Youth Justice.*



IMPORTANT UPDATE RE LEGAL ADVICE AND TENANTS' RIGHTS LINES

The Legal Advice and Tenant Rights Lines will be closed until January 3, 2020. We are closing slightly early for the holiday this year in order to perform key technological upgrades that will allow us to better serve clients in the new year.

During this time, we recommend that you use the resources at www.lawhelpca.org to find legal help based on your location and issue, or call 211. Thank you for your patience and understanding, and we hope everyone stays safe and enjoys the holiday season.

Wrap-up

- Questions?
- Thanks again for your vital support!

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