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AB 3088

**Western Center on Law &
Poverty**

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ABOUT WESTERN CENTER

Western Center on Law & Poverty fights in courts, cities, counties, and in the Capitol to secure housing, health care.

We advocate through the lens of economic and social justice for a strong safety net for low-income Californians.



What we will cover

- Tenant protections under AB 3088
- Credit protections
- Brief discussion of federal protections (CDC, CARES Act)

What we will not discuss:

- Specifics of mobilehome protections
- Homeowner protections
- Special process for higher income (>130% AMI) tenants who must prove COVID-related hardship



AB 3088 basics

- Evictions for most cases begin 9/2/2020 – no replacement for ER 1.
- Evictions where nonpayment is a cause of action paused until 10/5/2020 (protections apply).
- Landlords must use a cover sheet to indicate whether case involves nonpayment of rent.
- Intended to be a short term fix; more to come in January 2021.



What about evictions based on something other than nonpayment?

- ALL tenants, regardless of AB 1482 (Tenant Protection Act) exemptions, get just cause protections until 2/1/2021. CCP §1179.03.5
- No cause evictions are NOT permitted against any tenant until after February 1, 2021.
- No fault evictions based on “substantial renovations” are also limited.
- See Civil Code §1946.2 for list of permitted just cause bases for evictions



Refresher – what is no fault “just cause” under §1946.2(b)(2)?

- a) Intent to occupy by owner or specific family members, only if tenant agrees in writing.
- b) Withdrawal of property from rental market.
- c) Owner complying with gov't or court order to vacate. Tenants don't get relocation if caused conditions triggering the order.
- d) Intent to demolish or substantially remodel the property. § 1946.2(b)(2)(D).
 - a) Limited by AB 3088 until February 2021.



Protections against pretextual evictions

- If a landlord files an eviction against a tenant based on something other than nonpayment of rent, they cannot collect rental damages that accrued between March 2020 - January 2021. CCP §1179.03.5(a)(3)(B)
 - If tenant shows landlord was actually retaliating for nonpayment of rent when filing an unlawful detainer on another basis, subject to retaliation penalty under Civil Code §1942.5



AB 3088 nonpayment basics

- Two key time periods for nonpayment protections:
- March 1, 2020 – August 31, 2020
 - Rent for this period cannot be basis of eviction if tenant timely submits single declaration of hardship
- September 1, 2020- January 31, 2021
 - Rent for this period cannot be basis of eviction if tenant submits declaration of hardship for each month AND pays a total of 25% of the rent due for the entire period (lump sum at the end is OK)



Dec. of financial distress - CCP §1179.02

1. Loss of income caused by COVID-19 pandemic
2. Increased out-of-pocket expenses directly related to performing essential work during COVID-19 pandemic
3. Increased expenses directly related to the health impact of COVID-19 pandemic
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to COVID-19 pandemic 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.



AB 3088 non payment protections- CCP §1179.03

- Any notice to pay rent or quit must:
 - Provide 15 court days instead of 3 days' notice
 - Include a copy of a declaration of COVID-related financial distress for tenant to sign and return
 - 2 different versions, depending on timeframe
 - No proof is required from the tenant, except if landlord shows tenant has income > 130% AMI
 - No cause of action for UD if notice does not comply
- Landlords must also provide additional informational notice to all tenants who owe rent accrued between March 1, 2020 and September 1, 2020. CCP § 1179.04 (Note timing requirement.)



Declaration of financial distress

- If the tenant returns the signed declaration of COVID-related financial distress:
 - Any unpaid rent that accrued from March 1 through August 31 converted to consumer debt, can never form the basis for an eviction
 - For September-January 2021, tenant must pay 25% of their rent.
 - This is an aggregate amount that can be paid in any installments so long as it is paid by January 31.
 - The remaining 75% of rent is converted to civil debt.
- Even if the tenant pays nothing for Sept-Jan, if they return the declaration, no eviction for nonpayment can be filed until February 1, 2021



If tenant misses the 15 day deadline CCP §1179.03(h)(1) & UD is filed...

- Tenant may file the COVID-19 financial distress declaration within time to file answer.
- Court holds hearing, 5-10 days notice, applies §473 standard to determine if mistake, excusable neglect, etc. resulted in tenant's failure to submit declaration to landlord.
- Remember reasonable accommodations for tenants with disabilities.



What happens to the rent?

- Landlords can collect COVID rental debt in small claims court beginning March 1, 2021. Normal dollar and corporate limitations are waived.
 - Tenants can counterclaim in small claims court as usual
 - Landlords must offset any financial assistance/payments they have received
- ALL nonpayment evictions filed between March 4, 2020 and January 31, 2021 are masked regardless of outcome.
 - Small claims actions for COVID debt also masked.



Interaction with Local Laws

CCP §1179.05.

- *Any* local eviction protections in response to COVID adopted or extended on or after 8/19/2020 will not have effect until 2/1/2021.
- Older ordinances remain in effect.
- For ordinances that give tenants a specified period of time to repay rent, repayment must begin by March 1, 2021 and be completed by March 31, 2022.
 - If an ordinance set a date earlier than March 1, 2021 for repayment to begin, or earlier than March 31, 2022 for payment to be completed, the earlier date will control unless extended before 8/19/2020.



Local gov'ts may still extend protections

CCP §1179.05(b) local gov't may “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, consistent with subdivision (g) of Section 1946.2, as long as it doesn't impact nonpayment cases.



Other protections

- Increased penalties for illegal lockouts and utility shutoffs under CC §789.3 through 2/2021.
- Eviction protections apply to mobilehome residents.
- Limited foreclosure protections (See NHLP.org for summary)



Remember other tenant protections

- AB 1482 requires two step notice for curable violations
- Landlords must allege compliance with AB 1482
 - New complaint as of 9/1/2020
<https://www.courts.ca.gov/documents/ud100.pdf>
- If the tenant has a disability, request a reasonable accommodation. 2 CCR 12176
- Local law may provide enhanced protections



Federal protections - CDC moratorium, CARES Act

Federal law provides an additional layer of protection that will stop many evictions that would otherwise be permitted under AB 3088

- CARES Act eviction moratorium expired BUT, 30 day notice still required for covered properties (Visit www.nhlp.org for information)
- The CDC moratorium is more protective than AB 3088 in multiple ways, and is in effect as of 9/4/2020



CDC Additional protections

- Tenant can provide declaration at *any* time – no 15 day time limit
- No need for COVID specific hardship – instead income loss/increased expenses, income below \$99K (\$198K for joint tax filers) and other qualifiers
- Protects tenants from eviction for rent that accrued before March 1, 2020
- Prohibits landlord from even serving eviction notice
- Prohibits taking any further steps towards eviction, including execution of the writ
- Prohibits *all* no fault evictions
- Also includes enhanced penalties against landlords



QUESTIONS



THANK YOU!



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