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September 15, 2020

Eviction Relief for California Residential Tenants

Shortly after the shelter-in-place orders first went into effect this spring, California Governor Gavin Newsom issued an executive order allowing, but not requiring, local governments to impose temporary limitations on residential and commercial evictions in certain COVID-19-related situations. With no statewide moratorium, numerous jurisdictions adopted their own moratoriums. Over the past few months several of these jurisdictions have amended and extended their moratoriums multiple times.

Recently, as many of these local orders and regulations providing tenants protection from eviction were set to expire, California enacted Assembly Bill No. 3088, "The Tenant, Homeowner and Small Landlord Relief Stabilization Act of 2020." AB 3088 took effect on August 31, 2020, providing extended eviction relief for residential tenants.

AB 3088 looks retroactively at tenants who, because of the COVID-19 pandemic, have failed to make all or a portion of their rent payments that were due between March 1 and August 31, 2020. AB 3088 also provides temporary relief going forward for tenants who are unable to pay full rent through January 31, 2021, during the COVID-19 emergency. Tenants in both categories are granted eviction protection through February 1, 2021, provided certain requirements are met.

In order to qualify for eviction protections, most tenants with unpaid rent payments during the period March 1 to August 31, 2020, must simply return a declaration of COVID-19-related financial distress, signed under penalty of perjury, within 15 days of receiving a notice to "pay or quit." Tenants still may be evicted for reasons other than COVID-19-related financial distress, such as health and safety violations. In addition to delivering a declaration, tenants who are unable to pay full rent through January 31, 2021, must also pay at least 25% of the cumulative rent due between September 7, 2020, and January 31, 2021, either monthly, in a lump sum, or by some other means.

If a residential landlord plans to give its tenant a notice to "pay or quit" before March 1, 2021, the landlord must provide a notification which explains the tenant's rights and obligations under AB 3088. Additionally, such landlords must provide a form COVID-19-related financial distress declaration to such tenant.

Beginning March 1, 2021, all unpaid rent (no matter how much the tenant owes) is collectible in small claims court, and such claims are exempt from the \$5,000 cap and the prohibition on filing more than two small claims actions exceeding \$2,500 anywhere in the state in any calendar year.

AB 3088 also provides some relief to small landlords (those landlords with residential property comprising up to four dwelling units) by granting protections set forth in the existing Homeowners' Bill of Rights to such landlords, in particular those protections to a first lien mortgage or deed of trust that is secured by residential real property that is occupied by a tenant. However, AB 3088 does not provide any protections to commercial tenants and commercial landlords.

AB 3088 preempts local ordinances that defer rent obligations in response to the COVID-19 pandemic. Without further action from the California Legislature, existing local government eviction moratoriums may remain in place, but may not defer rent obligations beyond March 1, 2021.

Key Dates Under AB 3088

Prior to September 30, 2020 Residential landlords who have a tenant who did not pay one or more rental payments that were due between March 1 and August 31, 2020, must provide notice to such tenants about the passage of AB 3088 and its protections for tenants, using the statutorily prescribed language.

September 1, 2020 to January 31, 2021 Tenants who fail to make rental payments during this period because of the COVID-19 pandemic must pay at least 25% of the cumulative rent due during this period *and* provide landlords with a declaration of "COVID-19 related financial distress" to avoid eviction.

Beginning February 1, 2021 Tenants who fail to pay the 25% of cumulative rent due between September 1, 2020, and January 31, 2021, can be evicted.

March 1, 2021 to February 1, 2025 Landlords may file actions for recovery of COVID-19-related unpaid rent in small claims court regardless of the amount demanded (existing law limits such cases to demands up to \$5,000).

Prior to January 1, 2023 Small landlords can benefit from anti-foreclosure protections.

Assembly Member David Chiu (the author of AB 3088) has explained that this legislation provides a temporary solution at the state level, while the state, and potentially the federal government, can explore additional relief packages.

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