

California Legislation Extends Protections for Tenants Experiencing COVID-19-Related Financial Distress; Provides Financial Assistance for Eligible Landlords and Tenants

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On January 29, 2021, California Governor Gavin Newsom signed Senate Bill 91 into law, effective immediately. Senate Bill 91 extends through June 30, 2021, existing tenant protections under Assembly Bill 3088, which were set to expire on January 31, and provides additional protections for tenants experiencing COVID-19-related financial distress. Senate Bill 91 also establishes the State Rental Assistance Program, which permits the State and local governments to provide rental assistance on behalf of eligible tenants, using federally-appropriated funds.

The protections set forth in Senate Bill 91, including the eviction protections in the provisions referred to as the "COVID-19 Tenant Relief Act" ("the Act"), do not specifically exempt licensed communities and their residents from the broad definitions of "landlord" and "tenant," and some provisions of the Act continue to be inconsistent with the laws covering RCFEs and CCRCs. Although the Act requires landlords to give at least 15 days' notice to pay or quit, RCFEs and CCRCs should provide longer notice consistent with applicable regulations, statutes, and contractual provisions. Communities contemplating pursuing evictions should therefore consult legal counsel to seek guidance regarding compliance with all applicable laws.

Extension of Moratorium on Evictions Based on Non-Payment until June 30, 2021.

The Act, both in its original form, and as amended by Senate Bill 91, prohibits evictions based on the non-payment of rent and other fees, **only if a tenant has signed and returned a declaration under oath that the non-payment is due to COVID-19-related financial distress**. Such tenants who failed to pay due to COVID-19-related financial distress during the "protected period," March 1 through August 31, 2020, are completely protected from eviction for non-payment during that time period. Such tenants who fail to pay during the "transition period," September 1, 2020, through the new end date of June 30, 2021, are protected from eviction only if they pay at least 25% of the amount due during that time period by June 30, 2021. For-cause evictions, including for non-payment unrelated to COVID-19-related financial distress, **are not prohibited under the Act and may proceed**, subject to local rules.

The Act imposes **special notice requirements**. All termination notices served for non-payment of rent and other fees due after March 1, 2020, must include special language to advise tenants of their rights under the Act. The notice language varies depending on whether the unpaid fees accrued during the "protected period," or during the "transition period." If a tenant fails to pay amounts that came due during both periods of time, the landlord must issue a separate termination notice for each period with the appropriate language.

All termination notices must be accompanied by an **unsigned COVID-19 declaration** when served on tenants.

In addition, landlords must serve, in the same manner permitted for service of termination notices, a separate one-time **Notice of Rights** to any tenant who fails to make one or more rental payments between March 1, 2020, and June 30, 2021. This Notice of Rights should be served before February 28, 2021, on any tenant who has a termination notice pending and may be served concurrently with any new termination notice served on or before February 28, 2021. Beginning March 1, 2021, the Notice of Rights must be served before serving any termination notice.

New Protections for Tenants Experiencing COVID-19-Related Financial Distress.

Prohibition on Late Fees and Increased or New Fees. Senate Bill 91 provides additional protections for tenants who sign and provide their landlord a COVID-19 declaration, attesting, under penalty of perjury, that they have experienced COVID-19-related financial distress. Under Senate Bill 91, landlords cannot charge or attempt to collect late fees for rental debt covered by a tenant's COVID-19 declaration. Landlords also may not increase fees charged to such tenants or charge them new fees for services previously provided by the landlord for free. Senate Bill 91 provides, however, that a landlord that temporarily reduces or makes unavailable a service or amenity as a result of compliance with federal, state, or local public health orders or guidelines will not be considered to have violated the lease agreement.

Prohibition on Use of COVID-19 Rental Debt as Negative Factor. Senate Bill 91 prohibits landlords from denying an otherwise qualified prospective tenant because the tenant allegedly failed to pay rent or other fees due to a landlord between March 1, 2020, and June 30, 2021. Communities that know or have reason to believe that a prospective resident failed to pay rent or other fees to a prior landlord during this time period should consult with legal counsel before denying the resident's application for admission.

Prohibition on Use of Payment to Pay Arrearages. Senate Bill 91 also prohibits landlords from applying rent payments to any month other than the current month, unless the tenant agrees in writing. Communities that have a practice of applying payments to arrearages should amend their billing procedures to apply payments to the current month. If a tenant pays more than owed for the current month, the landlord should obtain the tenant's agreement, in writing, before applying the balance of the payment to prior amounts due.

Financial Assistance for Eligible Landlords and Tenants.

Senate Bill 91 establishes a program that uses \$2.61 billion in federal stimulus funds to help support landlords and tenants. Financial assistance is available to support tenants with a household income of less than 80% of the area median income, who have been unable to pay rent or other fees accrued from March 1, 2020, through August 31, 2020, due to COVID-19-related financial distress. Landlords can apply for funding and receive up to 80% of a tenant's unpaid rent and other fees from April 1, 2020, to March 31, 2021, in exchange for forgiving the remaining 20% and releasing all claims for nonpayment against the tenant. If a landlord does not participate in the program, a tenant can apply individually, but can only receive 25% of rent and other fees owed from April 1, 2020, to March 31, 2021. Eligible tenants would then be able to satisfy the 25% payment obligation under the Act to avoid eviction, but would be subject to a collection action later for the remaining amount due.

The program is administered by the Department of Housing and Community Development ("DHCD"). Applications to provide assistance to tenants with a household income of less than 50% of the area median income are given priority. Applications to support tenants in

communities disproportionately impacted by COVID-19, as determined by DHCD, are given second priority. DHCD will set up an application system to accept applications no later than March 15, 2021.

Lawsuits to Recover Unpaid Rent and Other Fees.

Effective July 1, 2021, landlords that did not receive financial assistance through the DHCD program may bring lawsuits to recover unpaid rent and other fees accrued between March 1, 2020, and June 30, 2021. If landlords wish to recover unpaid rent and other fees in small claims court, they must wait until August 1, 2021. When filing the complaint in court, the landlord must include documentation showing that the landlord made a good faith effort to investigate whether governmental rental assistance is available to the tenant, seek governmental rental assistance for the tenant, or cooperate with the tenant's efforts to obtain rental assistance from any governmental entity, or other third party. If the landlord refused to obtain financial rental assistance for an eligible tenant for whom funding was available, the court may reduce the damages awarded to the landlord.

When addressing resident non-payment, communities should pay careful attention to the requirements created by Assembly Bill 3088 and expanded by Senate Bill 91.