

New California and Federal Moratoria on Evictions Based on Non-payment

What Senior Living Communities Should Know

Key Points

- New California law prohibits residential evictions based on the non-payment of rent and other fees due between Mar. 1, 2020, and Jan. 31, 2021, if failure to pay is due to COVID-19 related distress.
- California courts may not issue summonses in any residential unlawful detainer actions based on non-payment until Oct. 5, 2020.
- New Order from the Centers for Disease Control and Prevention halts evictions for tenants who meet specific requirements through Dec. 31, 2020.
- Tenants who seek protection under the California law or the CDC Order must sign declarations under penalty of perjury to show that they qualify.

On Aug. 31, 2020, the California state legislature passed, and the Governor signed Assembly Bill 3088, known as the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020. The Act took effect on Sept. 1, 2020, and **prohibits residential evictions based on the non-payment of rent and other fees due between Mar. 1, 2020, and Jan. 31, 2021, if the tenant's failure to pay is related to COVID-19 related financial distress.**

The Act is a response to the Sept. 1, 2020 expiration of Emergency Rule 1, adopted by the Judicial Council of California in April 2020. Since its adoption, Emergency Rule 1 effectively halted all evictions, except those necessary to protect public health and safety. The purpose of this alert is to provide a brief overview of the Act as it applies to senior communities.

The Act applies to all landlords seeking to evict residential tenants for non-payment. The Act does not specifically exempt licensed communities and their residents from the broad definitions of "landlord" and "tenant." Some of the provisions of the Act are, however, inconsistent with the regulations covering Residential Care Facilities for the Elderly and CCRCs. Communities contemplating pursuing evictions should, therefore consult legal counsel to seek guidance regarding compliance with all applicable laws.

by *Lori C. Ferguson & Payam A. Saljoughian*



Key eviction provisions of AB 3088 include:

- **Prohibition on Courts Issuing Summonses:** Courts may not issue a summons on any complaint for unlawful detainer (eviction) of residential real property based on non-payment until **Oct. 5, 2020**, regardless of when the tenant first failed to pay or when any termination notice expired.
- **COVID-19 Declaration and Required Notice Language:** Any termination notice served on a tenant for non-payment of rent and other fees due between Mar. 1, 2020, and Jan. 31, 2021, must be accompanied by an unsigned COVID-19 declaration, with specific language as required by the Act. The exact notice language varies depending on whether the unpaid fees accrued from Mar. 1, 2020, through Aug. 31, 2020, or from Sept. 1, 2020, through Jan. 31, 2021. If a tenant fails to pay amounts due during both of these periods, the landlord must issue two termination notices for non-payment and two COVID-19 declarations. If the tenant's inability to pay is related to COVID-19, the tenant may complete and return the declaration(s) to the landlord during the notice period. Then the landlord may not evict the tenant for non-payment of the missed rent. The landlord may require "high-income tenants," as defined in the Act, to submit proof of COVID-19 related financial distress with the declaration. Tenants unable to pay rent owed for the period Sept. 1, 2020, through Jan. 31, 2021, must also pay at least 25 percent of their financial obligation on or before Jan. 31, 2021, to qualify for eviction protection under the Act.
- **Consequences of Failure to Return Declaration:** If the tenant does not return the declaration(s) during the notice period the landlord may proceed with eviction after Oct. 5, 2020. Courts may permit tenants to file late declarations and make late 25-percent payments to avoid eviction even after a lawsuit is filed.
- **Extended Notice Period:** Landlords must give at least 15 days' notice (not counting weekends and holidays). (RCFEs and CCRCs should provide longer notice consistent with applicable regulations and contractual provisions.)
- **Need to Re-issue Prior Notices:** Any termination notice previously served for amounts due on or after Mar. 1, 2020, must be re-issued to comply with the Act's requirements.
- **Separate Notice of Rights:** In addition to the above requirements, no later than Sept. 30, 2020, a landlord must provide any tenant who failed to make one or more rental payments between Mar. 1, 2020, and Aug. 31, 2020, a separate one-time non-payment notice containing specific language about rights under the Act. This one-time notice may be served concurrently with a termination notice if served on or before Sept. 30, 2020. Although portions of the Act seem contradictory, the Act appears to require provision of this notice of rights before serving a termination notice after Sept. 30 as well.

It is also important to note what AB 3088 does *not* do:

- **AB 3088 does not forgive unpaid fees.** Rather, the Act, defers payment and prohibits eviction based on COVID-19 rental debt. Landlords may take action to recover COVID-19 rental debt beginning Mar. 1, 2021, including through a collection action in small claims court regardless of the amount owed.
- **Under AB 3088, evictions for certain reasons other than non-payment may proceed.** Although AB 3088 does not refer *specifically* to the grounds for eviction set forth in statute and regulation governing RCFEs and CCRCs, those grounds (that do not involve non-payment) are consistent with the just cause grounds AB 3088 does reference.

On Sept. 1, 2020, the Centers for Disease Control and Prevention issued an Order temporarily halting residential evictions of certain tenants through Dec. 31, 2020, to prevent the further spread of COVID-19. Like the California law, tenants who seek protection under the Order must sign a declaration under penalty of perjury, showing they qualify for protection under the Order. The declaration must state that the individual signing it:

1. has used best efforts to obtain all available government assistance for rent or housing;
2. either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
3. is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
4. is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other non-discretionary expenses; and
5. would likely become homeless or forced to move into and live in close quarters in a new congregate or shared living setting if evicted.

The Order contains a form declaration tenants may use.

The Order takes effect Sept. 4, 2020, and its protections are set to expire Dec. 31, 2020, at which time tenants must meet their financial obligations to their landlords or risk eviction. The Order does not prohibit evictions for other reasons.

This Order specifies that it does not apply in any state or local jurisdiction "with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order." In many respects, the protections under California's AB 3088 offer greater protections than the federal Order. For example, the eviction moratorium under AB 3088 lasts longer, applies regardless of the tenants' income level, and does not require the tenant to seek or use government assistance to pay rent. In certain situations, however, the federal Order may offer more protection. Whether and to what extent the federal Order applies in California is not clear.

Violation of the federal Order carries **criminal penalties** for individuals in the form of up to one year in jail and/or fines up to \$100,000 if the violation does not result in death or up to \$250,000 if the violation results in a death. The fines for organizations violating the Order may be up to \$200,000 per event if death does not result or \$500,000 per event if there is a death.

These are simply the highlights of AB 3088 and the federal Order. Communities should consult legal counsel when pursuing resident evictions in order to ensure compliance with applicable law.

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