

COVID-19: Impact On Tenants

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Covid-19: Impact On Tenants presented by: Navneet Grewal, Litigation Counsel, Lucia Choi, Staff Attorney, Heidi Joya, Staff Attorney, Disability Rights California

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Note: These slides will be made available to webinar attendees

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What we are covering today:

- Short Overview of the Eviction Process in California
- Federal, State, and Local Response to COVID 19 in the housing context
- COVID 19 Related Reasonable Accommodation Requests
- Utility Shut-Offs

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GENERAL OVERVIEW OF CALIFORNIA'S EVICTION PROCESS

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California's Eviction Process

Step 1: Notice

- Before a landlord can go to court and file an eviction lawsuit, they must give the tenant a notice, by law.
- Needs to be in writing.
- Needs to be “served” (aka delivered).
- Gives length of time of notice (for example, 3 days, 30 days, 60 days).

- Usually gives reason for eviction (for example, nonpayment of rent).
- In some cases, gives a chance to fix the problem.

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California's Eviction Process

Step 2. Summons and Complaint

- In California, eviction cases are called “Unlawful Detainers.”
- The papers that start the eviction process in court are called a complaint and a summons.
- After the landlord files the complaint in court, the court issues a summons.
- These documents must be delivered to the tenant.
- The landlord has to say why it is evicting the tenant on the complaint.

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California's Eviction Process

Step 3: Answer

- Tenants only have 5 court days to respond in writing with the court.
- Not filing an Answer will result in Default Judgment
- The Answer should say what the tenant's legal arguments or “defenses” are to the eviction.
- Example: A common defense to a landlord's eviction lawsuit based on nonpayment of rent is that the landlord did not keep the property safe and clean.

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California's Eviction Process

Step 4: Trial

- In most cases, a landlord and a tenant make an agreement that ends the case – this is called settlement.
- If the case does not settle, then it goes to trial.
- Both sides present their facts, evidence, and arguments before a judge or jury.

- If tenant wins, the tenant gets to stay and pay the rent.
- If tenant loses, there is a judgment and possession is returned to the landlord.

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California's Eviction Process: A Visual

Flow Chart for California's eviction process: Topmost text box reads Notice and is followed by an arrow pointing to a textbox below that reads Summons and Complaint. Summons and Complaint box is followed by a double-sided arrow, the arrow pointing to the left leads to a text box that reads No Answer; the arrow pointing to the right reads Answer. From the No Answer text box flows an arrow pointing to a text box below that reads Default Judgment. From the Default Judgment text box flows an arrow pointing towards a text box that reads Lock Out. From the Answer text box that flowed from the Summon and Complaint text box, flows a double-sided arrow. The arrow to the left, points to a text box that reads Settlement. The arrow to the right, points to a text box that reads Trial. From the Trial text box flows a double-sided arrow. The arrow pointing to the left, points to a text box that reads Win. From the Win text box flows an arrow pointing to a text box that reads Stay and Pay Rent. From the arrow that points to the right that flowed from the Trial text box, is a text box that reads Lose. From the Lose text box flows an arrow pointing to a text box that reads Lock Out.

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California's Eviction Process

- A landlord cannot lock out or change the locks until and unless the landlord gets a judgment from the court.
- Landlords cannot change locks on their own, take tenants' things, remove the front door, or turn off heat/electricity.

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HOW DOES THE FEDERAL CARES ACT PROTECT TENANTS?

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Federal Protections under the CARES Act

- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) includes a moratorium for tenants living in certain types of housing.
- The Act's eviction protections started on March 27, 2020 and will last for 120 days – or July 25, 2020.
- After the moratorium is over, a landlord will have to give 30 days notice to evict someone for not paying rent during the crisis.

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Federal Protections under the CARES Act

Landlords of covered properties cannot file new eviction actions if a tenant did not pay rent during the Coronavirus emergency.

- “Covered properties”
 - Some examples: Public housing, Section 8 voucher program, Project-based Section 8 housing, Rural Housing program, Low Income Housing Tax Credit program, Housing with a federally backed mortgage loan.
- “Filing new eviction actions”
 - Does not apply to evictions filed before the CARES Act rules were put in place.

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Federal Protections under the CARES Act

- A landlord cannot charge fees, penalties, or other charges to the tenant related to nonpayment of rent.
- Does not stop landlords from filing evictions based on other reasons besides nonpayment of rent or nonpayment of other fees/charges.

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Federal Protection under the CARES Act

- How do I know if my housing is protected by the CARES Act?
 - If you know you are in housing that the federal government helps pay for – like public housing – you are covered.
 - Finding out if your building is backed by a federal mortgage is harder.

- The National Low Income Housing Coalition is keeping a list, but it is not perfect. For example, it does not include single family homes with 1-4 units that are covered. You can find the list here:
- <https://nlihc.org/federal-moratoriums>

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HOW ARE CALIFORNIA TENANTS PROTECTED DURING COVID-19?

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Big Picture

Changing every day, but for now:

- The **state** orders delay evictions
- The **cities and counties** that have passed local ordinances either:
 - Create defenses to evictions related to COVID-19; or
 - Stop landlords from filing evictions related to COVID-19.

You should know that no new eviction summons will be issued for at least a few months, unless it fits under the exception for public health and safety.

But your local ordinances will determine if households might be evicted *after* the emergency is lifted.

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STATE-WIDE ACTIONS – GOVERNOR’S EXECUTIVE ORDER

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COVID-19 Statewide Actions: Governor’s Executive Order

- The order is NOT an eviction moratorium
- May delay the eviction process 60 days only for tenants who cannot pay the rent due to COVID-19 related reasons.

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COVID-19 Statewide Actions: Governor’s Executive Order

Three conditions to be a protected tenant:

1. Tenant must have lost income because of COVID-19
2. The tenant must tell the landlord in writing within 7 days of the rent being due AND
3. The tenant must have documents that show that they lost income because of COVID-19

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COVID-19 Statewide Actions: Governor's Executive Order

What does it mean to lose income because of COVID-19?

- Sickness (confirmed or suspected) with COVID-19, or caring for a household or family member who was sick with the virus.
- Losing income because you were laid off, losing work hours, or anything else that made you lose income because of COVID-19 or the government's response to it.
- Missing work to care for a child whose school was closed because of COVID-19.

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STATE-WIDE ACTIONS – JUDICIAL COUNCIL

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COVID-19 Statewide Actions: Judicial Council Court Rule

- What is the Judicial Council?
 - Judicial Council makes policies and rules for the California court system.
 - Judicial Council passed own rules related to eviction court procedures during COVID-19.
 - The Rule effectively delays all new eviction proceedings until at least 90 days after the state of emergency is lifted.

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COVID-19 Statewide Actions: Judicial Council Court Rule

- California courts cannot issue the eviction lawsuit summons - the document that "starts the clock" on tenant's deadline to file an Answer.

- This means tenants do not have to file answers until the Governor lifts the state of emergency.
- Exception: eviction is necessary to protect public health and safety
- The Rule prohibits all California courts from entering a default judgment because the tenant failed to file an answer.
 - Exception: eviction is necessary to protect public health and safety

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COVID-19 Statewide Actions: Judicial Council Court Rule

- For ongoing eviction proceedings where the tenant has already filed an answer (but there is no trial date yet), trials will be set 60 days or more from the date either party requests the trial date.
- For ongoing eviction proceedings where the tenant has filed an answer (AND there is already a trial date), those trial dates will be postponed until at least 60 days from the first trial date.

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COUNTY ACTIONS – LIMITING COURT ACCESS

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Limited Court Access

- Many courts are closed to the public or only allow small numbers of people to come in so that they can follow social distancing guidelines.
- Best way to find out what is going on in your area is to look on the court's website and read the latest COVID-19 notice.

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Limited Court Access

- A good summary: www.law.com/therecorder/2020/04/03/how-covid-19-is-impacting-california-courts-roundup-of-services
- You can also call your local legal aid organization.

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Limited Court Access

- Most Courts are closed except for emergency services. These emergency services do not include normal eviction cases.
- But be careful – your landlord might file an “ex parte” to prove that evicting you would be a threat to the public health and safety.

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COUNTY AND CITY EVICTION ORDINANCES

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County and City Ordinances

- Counties and cities have passed their own ordinances after the State Executive Order.
- Most of these either:
 - Say that a tenant can raise COVID-19 as a defense to an eviction, if they did not pay rent; or
 - Say that a landlord cannot file an eviction lawsuit if a tenant did not pay rent because of COVID-19
- Every ordinance is different depending on the county or city
- Most *county* ordinances cover:
 1. The unincorporated areas of the county; OR
 2. The entire county areas except areas with own city ordinances

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County and City Ordinances

- Most ordinances:
 - Do not relieve tenants from paying rent.
 - Stop evictions during the state of emergency only for tenants who cannot pay rent because of a COVID-19 related reason.
 - Require a tenant to give a landlord notice that they cannot pay in writing.
 - Require proof.
- Some counties and city ordinances provide more protections.

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County and City Ordinances: Examples of Broader Protections

- In some Counties/Cities, landlords cannot ever evict for rent unpaid because of COVID-19

- Ex: Alameda County, Solano County, Oakland City, Berkeley City
- This means that the landlord will have to go through regular debt collection means, rather than evict tenant
- Temporary moratorium on “no-fault” evictions
 - “No-Fault” eviction definition: when the termination of tenancy is not based on anything the tenant did
 - Ex: Los Angeles County, Santa Monica City,
- Temporary moratorium on evictions based on unauthorized occupants or pets
 - Ex: Los Angeles County, Los Angeles City, Santa Monica City, West Hollywood City (unauthorized occupants only)

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County and City Ordinances: Examples of Broader Protections

- Temporary moratorium on evictions based on late fees, interest on owed rent, or any other fees associated with payment of rent.
 - Ex: Los Angeles County, Alameda County
- Landlord cannot charge late fees during state of emergency.
 - Ex: Los Angeles County, Solano County, Fremont City, Oakland City
- Lets a tenant use their own sworn statement as proof of why they cannot pay rent
 - Ex: Los Angeles County

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County and City Ordinances: Examples of Broader Protections

- Tenant has more time than the State Executive Order gives to tell landlord that they cannot pay the rent that month.
 - Ex: San Diego County, San Bernardino City
- Provides tenant time to pay back rent
 - Ex: Los Angeles County (12 months)
- Prohibits rent increases during the moratorium period
 - Los Angeles County, San Jose City, Oakland City, Concord City, West Hollywood City

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County and City Ordinances: Takeaways

- No rent waiver. Pay your rent if you can.
- Collect any and all documentation related to unemployment, reduced work hours, or other financial loss due to COVID-19.
- Tell your landlord, in writing, that you cannot pay your rent because of COVID-19 as soon as you can. And keep a copy/screenshot.
- Do not sign any document your landlord gives you without calling legal aid organization first!
- While there are common themes, the city or county you live in may provide more protections.
- Again, these City and County Ordinances vary, so check your local ordinance.

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Example

- Marta lives in Placer County, in a mobile home park, with her two kids. Both kids have developmental disabilities and use regional center services.
- Marta worked at a restaurant that closed because of COVID-19 and she stays at home to take care of her kids.
- Marta cannot pay rent on May 1st.
- What should Marta do?
- What if Marta lives in Rural Housing funded by the federal government?
- What if Marta lives in Los Angeles County?

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HOW TO REQUEST REASONABLE ACCOMMODATIONS DURING COVID-19

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Reasonable Accommodations

- Law: landlords must make reasonable accommodations in rules, policies, or practices, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

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Reasonable Accommodations

- How do you request a reasonable accommodation?
 - Does not need to be in any particular form.
 - Writing is best, but it is okay to just ask in person.
 - Requests should explain disability-related need and accommodation requested.
 - There needs to be a connection between the disability and the requested accommodation.

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Reasonable Accommodations

- Landlord cannot just say no. If it says no, then the landlord has to see if there is another accommodation that would work.
 - Ignoring a request is the same thing as saying no.
- Landlord must provide an accommodation unless it imposes a undue burden on the landlord or it fundamentally changes the service provided by the landlord.
- Reasonable accommodation requests can be made at any time.

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Reasonable Accommodations: Example

- Example: Tenant, who has an autoimmune condition, has not been going to work because of the condition. Because he is an hourly wage earner, tenant has no income coming in. Tenant cannot pay rent. Tenant got a notice to pay rent or leave the unit.
- A possible reasonable accommodation request:
 - “Because of my disability, I am more vulnerable to contracting COVID 19 and have decided to self-quarantine. I have not been able to go to work. I am requesting that we enter into a payment plan so that you can receive the rent in full at a later date. Please rescind your notice.”

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Reasonable Accommodation: Example

- Example: The rental agreement limits occupants to three persons. It also limits guests to 14 days. Tenant has a disability and in normal circumstances, has an in-home-supportive-services worker

come and help out. However, because of COVID-19, the IHSS worker cannot come to tenant's home. Tenant wants a family member to move in until it's safe for the IHSS worker to return. This may be longer than 14 days.

- A reasonable accommodation can be requested to have the family member move in temporarily for longer than 14 days.

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WHAT HAPPENS IF TENANTS CANNOT PAY UTILITY BILLS?

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Utilities

- Most utilities are not shutting off service because you did not pay.
- Examples
 - Southern California Edison
 - Pacific Gas & Electric
 - San Diego Gas & Electric
 - Pacific Power
 - LADWP
 - Sacramento Municipal Utility District
- Call your utility (that you get bills from) to see if:
 - You can get lower bills because you have a low income
 - You can get a repayment plan

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Questions?

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