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California's AB 3088 Provides Relief to Residential Tenants Who Otherwise May Have Been Facing Eviction

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Late into the night on August 31, 2020, the California Legislature passed, and Governor Newsom signed into law the COVID-19 Tenant Relief Act of 2020 (Tenant Relief Act), extending the moratorium on residential evictions through March 1, 2021, due to unpaid rent accruing as a result of a hardship related to COVID-19. The Tenant Relief Act is one of three related acts that were included as part of the legislation also referred to as AB 3088. Passage of AB 3088 came down to the wire, having been passed on the very last day of the 2020 legislative session and on the eve of the expiration of the eviction moratorium set by the California Judicial Council. Had the bill not been passed, millions of residential tenants throughout the state would have been subject to evictions immediately in the absence of local ordinances (note that local city and county ordinances imposing eviction moratoriums are still in effect in many jurisdictions and may be applicable to both residential and commercial tenancies).

AB 3088 was passed in lieu of several other more tenant-friendly bills that had been previously under consideration during the 2020 legislative session, including SB 939, SB 1410 and AB 1436, among others. Although AB 1436 was the most recent focus of lawmakers and believed by many likely to pass, late last week, landlord and tenant advocacy groups and lawmakers, including Governor Newsom, shifted attention to AB 3088 in an effort to reach a compromise that was more palatable to landlords before the sunset of the statewide eviction moratorium.

Related Professionals

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The passage of AB 3088 is intended to stabilize the already fragile housing situation in California and establish a “framework for all impacted parties to negotiate and avoid as many evictions and foreclosures as possible.” The full text of AB 3088 is available [here](#).

While AB 3088 also provides certain protections against foreclosure by encouraging mortgage services to grant forbearance requests to limited, statutorily-defined small landlords, those provisions of the bill are not discussed here. However, below is a summary of some of the more significant provisions of the Tenant Relief Act, which apply immediately and remain in effect until February 1, 2025, to protect residential tenants:

- Landlords cannot begin to file actions for COVID-19-related rental debt prior to March 1, 2021. The Tenant Relief Act is clear, however, that no missed rent payments are forgiven, and a tenant must pay all accrued rent prior to that date.
- The notice period for non-payment of rent is extended from 3 to 15 days (exclusive of Saturdays, Sundays, and other judicial holidays), providing tenants additional time to respond to notices to pay rent or quit.
- For rent that comes due prior to January 31, 2021, a landlord must also provide notice to the residential tenant of the protections afforded to the tenant by the Tenant Relief Act, advising the tenant that he or she will not be evicted due to failure to pay rent, provided that the tenant deliver to the landlord a declaration setting forth the reason for the COVID-19-related financial distress, signed under penalty of perjury, and the tenant pays the minimum rent discussed below. The precise language to be used in the notice and the declaration is expressly set forth in the Tenant Relief Act. The notice must also include an unsigned copy of the form of declaration to be returned by the tenant. The declaration must be provided to the landlord within 15 days, absent a showing of good cause by the tenant for failing to do so.
- A landlord can only mandate a residential tenant to submit documentation supporting the claim of COVID-19-related financial distress if the tenant is a “high-income tenant” – defined as a tenant “with an annual household income of 130 percent of the median income” published by the Department of Housing and Community Development for that county.
- A tenant who failed to make rental payments between March 1, 2020 and August 31, 2020, as a result of the COVID-19 pandemic cannot be evicted before March 1, 2021, based on that nonpayment. Moreover, a landlord must provide notice to such tenants about the passage of the Tenant Relief Act and its protections for tenants, prior to September 30, 2020, using the statutorily prescribed language.
- For a COVID-19-related failure to pay rent accruing between September 1, 2020 and January 31, 2021, the tenant must pay at least 25% of the cumulative rent due between September 1, 2020 and January 31, 2020, to avoid eviction. For example, if the tenant states in the declaration form that COVID-19 prevented payment of rent in September and October 2020, landlord cannot evict the tenant if, on or before January 31, 2021, tenant makes a payment equal to 25% of September’s and October’s rental payments (*i.e.*, total of half a month’s rent).



- The Tenant Relief Act does not provide protection to a tenant “guilty of unlawful detainer” before March 1, 2020, though it does prohibit unlawful detainer actions from being initiated before October 5, 2020.
- The Tenant Relief Act allows landlord to file actions for recovery of COVID-19-related rental debt in small claims court regardless of the amount demanded (small claims court is normally limited to demands only up to \$5,000) through February 1, 2025, providing quicker and more efficient resolution. And it removes the limitation on the number of such actions that can be filed in any calendar year (normally two) during that time period.
- Any waivers of the protections of the Tenant Relief Act are void. And landlords who fail to comply with the provisions of the Tenant Relief Act are subject to fines and penalties.

The Tenant Relief Act acknowledges existing local city and county ordinances providing COVID-19 protection to residential tenants but preempts those ordinances to the extent they are less protective than or inconsistent with the Tenant Relief Act. Thus, it remains important to check the rules of your specific locality to determine if there are any additional protections for residential tenants, and, since the Tenant Relief Act does not apply to commercial tenants, whether there is any local ordinance that protects commercial tenants. Information on and links to copies of these moratoriums can be found [here](#).