



The Apartment Association of Greater Los Angeles

Bill Summary and FAQs: Senate Bill 91– Extends Statewide Tenant Eviction Protections Through June 30, 2021 (From January 31, 2021 Per Expired Assembly Bill 3088)

IMPORTANT – Notice **Due** February 28th

If, as of February 1, 2021, your tenant owes one or more months of rent due to COVID-19 financial distress (e.g., any rent due from March 1, 2020 through and including January 31, 2021), you must serve an informational notice from the State of California advising tenants of their right to rental assistance. This new required notice is contained in the Apartment Association of Greater Los Angeles' Forms Library (see Form K.1).

Governor Gavin Newsom signed Senate Bill 91 on January 29, 2021. With its passage, up to \$2.6 billion in Federal COVID relief funding is be used to pay landlords of certain qualifying low-income renters up to 80% of rent owed due COVID-19 financial related hardships, and qualifying tenants may also obtain up to 25% of rent owed due to COVID-19 financial hardships covering rent due from April 1, 2021 through June 30, 2021. Senate Bill 91 replaces and extends protections afforded renters under Assembly Bill 3088, which expired January 31, 2021.

Summary of Senate Bill 91. The following is a summary of Senate Bill 91. This document is not meant to be comprehensive. You are encouraged to seek advice from a licensed attorney when making decisions about how to proceed with an eviction or attempting to collect rental debt owed, or with respect to any other matter impacting your lease or relationship with your renter(s).

- **Extensions.** Extends “Transitional Time Period” from January 31, 2021 to June 30, 2021 (previously expired on January 31, 2021 under Assembly Bill 3088). If a tenant / resident pays at least 25% of their rent due for each of the months from September 1, 2020 to June 30, 2021 and signs a Declaration of COVID-19 Financial Hardship (See Form K.2), they will be protected from eviction. The 25% must be paid on or before June 30, 2021, and there is no obligation to make periodic (monthly) payments – the 25% may merely be paid as a “lump sum” at any time on or before June 30, 2021.
- **Extension of Just Cause Protections.** Requires all terminations of tenancies be for just cause through June 30, 2021. Extends expiration date of prohibitions on retaliation because of COVID-19 rental debt from February 1, 2021 to July 1, 2021.
- **Small Claims Court.** Delays landlord access to small claims court for COVID-19 rental debt until August 1, 2021 (Previously March 1, 2021 under expired Assembly Bill 3088).
- **Rental Assistance.** Establishes a rental subsidy program. Assistance is to be paid directly to property owners. Each local Housing Agency / Housing Department will have a public facing online portal through a Community Development Financial Institution (CDFI) and the online portals are targeted to be available for online applications by March 15, 2021. Either rental property owners or

renters may apply for this relief, and owners will be matched with their tenants or vice versa by the system. Relief covers past due rent for existing tenants (including any other financial obligations due under the lease – excluding damages to a rental unit).

The rental assistance program will pay landlords up to 80% of the rent in arrears (not total rent for the period) between April 2020 and March 2021, and a landlord must agree to forgive (write-off) the remaining 20% and not pursue eviction for non-payment or any other curable breach of the lease.

Alternatively, the program will pay landlords 25% of rent in arrears between April 1, 2020 and June 30, 2021, if landlords will not forgive unpaid amounts and forego eviction. Additionally, tenants may apply for payment 25% of rent due for up to three (3) months for the months of April, May, and June 2021. (Note: Under Senate Bill 91, if tenants pay 25% of rent due between September 1, 2020 and June 30, 2021 and sign a declaration under penalty of perjury declaring COVID-19 financial related distress, the balance of rent due, or 75%, is converted into consumer debt and non-payment would not constitute a basis for eviction.)

- **Rental Relief Program and Funding Priorities.** Senate Bill 91 establishes a rental subsidy program that includes \$2.61 Billion of Federal funding for rental relief. A portion of the funding would be distributed by large jurisdictions (200,000 or more in population) with the smaller jurisdictions distributed by the State. Eligibility for this program is based on the Federal government's eligibility rules. Funding will first be made available to those with household income of less than 50% of the Area Median Income (AMI) for the county where the rental unit is located, second to communities disproportionately impacted by COVID-19, third to those with household income of less than 80% AMI.
- **IMPORTANT: New Informational Notice Due by February 28, 2021.** Service of a new informational notice to all tenants who, as of February 1, 2021, have an outstanding rent balance for any period between March 1, 2020 and January 31, 2021 is required. (Note: This new form and all other required Senate Bill 91 forms are available in the Apartment Association of Greater Los Angeles' forms library. This notice is Form K.1.)
- **COVID-19 Debt Not Allowed as Factor in Tenant Screening.** Housing providers and tenant screening companies are now prohibited from using COVID-19 rental debt as a "negative factor for the purpose of evaluating a prospective housing application or as the basis for refusing to rent a dwelling unit to otherwise qualified prospective tenant."
- **Sale or Assignment of COVID Debt Temporarily Prohibited.** The sale or assignment of COVID-19 rental debt is temporarily prohibited until July 1, 2021. Additionally, the sale or assignment of COVID-19 rental debt for certain individuals who qualified for rental assistance, where the person's household income is at or below 80% of AMI for the 2020 calendar year.
- **Increased Fees / Decreased Services Prohibited.** Increasing fees to a tenant or charging fees for services that were previously provided without charge is prohibited. Additionally, housing providers are prohibited from decreasing services or amenities.
- **Breach of Contract Actions to Recover COVID-19 Rental Debt.** A housing provider must make a "good faith effort" to seek available government rental assistance for the tenant and/or cooperate

with the tenant's efforts to obtain governmental rental assistance. A landlord must attach documentation of the foregoing to any complaint seeking payment of COVID-19 rental debt. This requirement, however, does not apply to certain jurisdictions that received a direct allocation of assistance under the Consolidated Appropriations Act. Failure by housing providers to make a "good faith effort" to seek available government rental assistance for the tenant and/or cooperate with the tenant's efforts to obtain governmental rental assistance may adversely affect a housing provider's ability to evict or recover past due rent.

In other words, a court may reduce the damages awarded if the court determines that a landlord refused to obtain rental assistance from the State Rental Assistance Program created under Senate Bill 91 in instances where the tenant has met the eligibility requirements and where funding was available.

- **Security Deposit.** Prohibits landlords from applying a security deposit to a resident's COVID-19 rental debt during the tenancy without tenant's written consent but permits application of deposit to COVID-19 rental debt after the tenancy terminates.
- **Preemption / Interaction With Local Laws.** Prohibits extension or expansion of local eviction moratoria (beyond what was in place on August 19, 2020) until July 1, 2021.
- **Repayment of COVID-19 Rental Debt.** The latest start date of repayment under a local moratorium has been changed from March 1, 2021 to August 1, 2021. Also, the latest end date of repayment under a local eviction moratorium has been changed from March 1, 2022 to August 1, 2022.
- **Other Provisions.** (i) Limits the maximum recoverable amount of attorney's fees on any unlawful detainer lawsuit seeking to recover COVID-19 rental debt. (ii) Charging of late fees in connection with COVID-19 rental debt are prohibited until June 30, 2021. (iii) Prohibits any rental housing provider, tenant screening company, or other entity from evaluating prospective tenants on the basis that using COVID-19 rental debt as a negative factor. (iv) Prevents rental housing providers from applying current tenant payments retroactively to back rent or other charges.

Interplay With Local Eviction Moratoriums. Virtually every local jurisdiction within California has or had an eviction moratorium in place to address nonpayment due to COVID-19 financial related hardships. Like its predecessor, Assembly Bill 3088, in general, local eviction moratoria can remain in place until the end of their term but cannot be extended or renewed after August 19, 2020 with an effective date prior to July 1, 2021. If a local eviction moratorium provides for repayment of back due rent to begin after August 1, 2021, or ties repayment to the end of the state of emergency or local emergency, that repayment period is required to start on or before August 1, 2021 and end by August 31, 2022.

The \$2.61B Rental Assistance Program. Senate Bill 91 establishes a rental subsidy program that includes \$2.61 Billion of Federal funding for rental relief. A portion of the funding would be distributed by large jurisdictions (200,000 or more in population) with the smaller jurisdictions distributed by the State. Eligibility for this program is based on the Federal government's eligibility rules. **Renters and housing providers may apply for rental assistance starting on or about March 15, 2021.** For more information, go to: <http://housingiskey.com> or call 1(833) 422-4255.

The rental assistance is to be made available for eligible tenants whose household income is no more than 80% of an area median income (AMI) for the 2020 calendar year. Priority is to be given to tenants whose household incomes are no more than 50% of the AMI.

Rental property owners would receive 80% of the total amount of rent in arrears covering the period from April 1, 2020 through and including March 31, 2021. Rental housing providers who accept the 80% must agree to forgive the remaining 20% and not pursue evictions or seek to recover the remaining 20% of rental debt. (This does not cover 80% of total rent for the period, but 80% of the amount of rental debt that remains in arrears.) In cases where housing providers do not wish to agree to forgive 20% of the unpaid rent, the State could pay 25% of the rent in arrears to provide renters protection from eviction.

Tenants may also apply for assistance and receive 25% of rental debt in arrears if the rental housing provider does not wish to receive the 80% program set forth above, to assist the tenant with reducing outstanding rental debt and to meet the 25% criteria necessary to be protected from eviction. The 25% would be made available to cover unpaid rent between September 1, 2020 and March 31, 2021. This assistance would be paid directly to the rental property owners. Additionally, a tenant can apply for and receive 25% of rent due for up to three (3) months for the months of April, May and June 2021, which assistance would also be paid directly to the rental property owner.

Rental property owners would be required to notify their tenants of the availability of these funds. Rental housing providers that fail to notify renters of the availability of these funds under the rental assistance program would be precluded from proceeding with an unlawful detainer lawsuit. A new notification form, "Notice of COVID-19 Tenant Relief Act" is available in the Apartment Association of Greater Los Angeles Forms Library and is **due on or before February 28, 2021 to any renter that as of February 1, 2021 owes rental debt covering the period of March 1, 2020 through January 31, 2021** – See Form K.1.

Higher Income Renters Must Continue to Provide Documentation of COVID Impacts. Like Assembly Bill 3088, housing providers that have proof of income on file indicating a tenant household makes at least 130 percent of the median income for the county where the rental property is located, (as published by the Department of Housing and Community Development in the Official State Income Limits for 2020), upon request, tenants are required upon request to provide documentation which shows that they have experienced a decrease in income or increase in expenses due to the COVID-19 pandemic. Housing providers must request the document along with serving the 15-day notice. Renters may provide any form of "objectively verifiable documentation" that demonstrates the financial impact being experienced such as a letter from your employer, an unemployment insurance record, or medical bills.

Here's How Senate Bill Works and What Every Landlord Needs to Know. Senate Bill 91 extends the provisions of Assembly Bill 3088, which expired on January 31, 2021, until June 30, 2021 and adds a new aspect that provides \$2.6 billion of rental relief. Owners that "got" Assembly Bill 3088 will understand Senate Bill 91 because it is substantially similar except for the rental relief component.

To be protected in instances where a tenant does not pay rent due to COVID-19 related financial distress (or impacts), and to preserve the right to eventually evict or seek recovery from a tenant for non-payment of rent occurring between March 1, 2020 and July 31, 2021, the Apartment Association

of Greater Los Angeles has prepared a series of forms and notices landlords need to utilize in order to comply with Senate Bill 91.

Rental property owners should maintain in their records a copy of each such notice and a standard form "Proof of Service" as evidence of providing these new notices and forms in addition to any other documentation (e.g., certified return receipt). **Never** provide a copy of the proof of service to your tenant – that is only for your records. There are four (4) different Senate Bill 91 forms that have been created:

- ***Notice of COVID-19 Tenant Relief – Due by February 28, 2021 if as of February 1, 2021, rental debt is owned for March 1, 2020 through January 31, 2021.*** On or before February 28, 2021, landlords must provide a new notice, "Notice of COVID-19 Tenant Relief Act" to all tenants that did not pay a portion of rent that became due between March 1, 2020 and January 31, 2021 and such amount is still past due and owing.

(Note: If no rent is owed as of February 1, 2021 for March 1, 2020 through January 31, 2021, but rent payments are missed thereafter at any time between February 1, 2021 through June 30, 2021, it is also suggested this new notice then be provided to such renters following non-payment of rent.)

This form is provided by and available on the website of the Apartment Association of Greater Los Angeles (see Form K.1):



NOTICE OF COVID-19 TENANT RELIEF ACT

(Due NO LATER THAN February 28, 2021 and Thereafter: Provide This Notice to Tenants Who, as of February 1, 2021, Have Not Paid One or More Rental Payments, and For Each Month Thereafter in Which Tenants Have Not Paid Rental Payments During the Covered Time Period of February 1, 2021 Thru June 30, 2021 – Per Senate Bill 91 – See Also the Note at Bottom of the Second Page of this Notice.)

Apt No.: _____

TENANT(s) / RENTER(s): _____,
and all other occupants in possession of the property.

PREMISES: _____
(Street Address) (City) (Zip Code)

“NOTICE FROM THE STATE OF CALIFORNIA: The California Legislature has enacted the COVID-19 Tenant Relief Act which protects renters who have experienced COVID-19-related financial distress from being evicted for failing to make rental payments due between March 1, 2020, and June 30, 2021.

- ***New Fifteen Day Notices to Pay Rent or Quit.*** Following or concurrently with the serving of the above Notice of COVID-19 Tenant Relief Act of 2020, landlords who seek to collect the unpaid rent may also wish to provide non-paying tenants with one or more "Fifteen Day Notices to Pay Rent or Quit" depending upon the financial status of the tenant (e.g., "High Income" vs. "Non-High Income"). These new Fifteen (15) Day Notices cover rent due during the period of September 1, 2020 and June 30, 2021 (e.g., the now extended "Transitional Period" previously expiring on January 31, 2021

under Assembly Bill 3088 but extended until June 30, 2021 under Senate Bill 91). There is no need for three (3) day notices to “Pay or Quit” if non-payment is due to COVID-19 Financial Related Distress.

A “High Income” tenant means a tenant with an annual household income of 130 percent (130%) of the area median income, as published by the Department of Housing and Community Development in the Official State Income Limits for 2020, for the county in which the residential rental property is located. A “High Income” tenant shall not include a tenant with a household income of less than one hundred thousand dollars (\$100,000). For more information, see the Department of Housing and Community Development website at: <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/Income-Limits-2020.pdf>.

The “Fifteen Day Notice to Pay Rent or Quit” forms provided by and available on the website of the Apartment Association of Greater Los Angeles (see Forms K.3 and K.4).

- **Fifteen Day Notice to Pay Rent or Quit (For Use to Collect Rent Owed During Extended Transitional Period of September 1, 2020 Through June 30, 2021 – for Non-High-Income Tenants)** - This form allows the landlord to provide notice to tenants that are not “High Income” tenants and who have not paid a portion of their monthly rent due and still owing during the Transitional Period between September 1, 2020 and June 30, 2021.



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FIFTEEN (15) DAY NOTICE TO PAY RENT OR QUIT

(For Use For Rent Owed During Periods on or After February 1, 2021
– for Non-High-Income Tenants Per Senate Bill 91)

Apt No.: _____

TENANT(s) / RENTER(s): _____,
and all other occupants in possession of the property.

PREMISES: _____
(Street Address) (City) (Zip Code)

YOU ARE HEREBY NOTIFIED that the rent stated below has not been paid for the above-described premises. You are hereby required to pay said rent to the undersigned within fifteen (15) days, excluding Saturdays, Sundays, and other judicial holidays, after service of this notice to you, or quit and deliver up possession of the above-described premises. Failing this, legal proceedings will be instituted against you to recover possession of said premises, to declare a forfeiture of the agreement under which you occupy said premises and to recover damages, plus costs and attorneys’ fees.

Fifteen Day Notice to Pay Rent or Quit (For Use to Collect Rent Owed During Extended Transitional Period of September 1, 2020 Through June 30, 2021 – for High-Income Tenants) - This form allows the landlord to provide notice to tenants that are “High Income” tenants and who have not paid a portion of their monthly rent due and still owing during the Transitional Period between September 1, 2020 and June 30, 2021.



www.aagla.org

FIFTEEN (15) DAY NOTICE TO PAY RENT OR QUIT

(For Use For Rent Owed During Periods on or After February 1, 2021
– for High-Income Tenants Per Senate Bill 91)

Apt No.: _____

TENANT(s) / RENTER(s): _____,
and all other occupants in possession of the property.

PREMISES: _____
(Street Address) (City) (Zip Code)

YOU ARE HEREBY NOTIFIED that the rent stated below has not been paid for the above-described premises. You are hereby required to pay said rent to the undersigned within fifteen (15) days, excluding Saturdays, Sundays, and other judicial holidays, after service of this notice to you, or quit and deliver up possession of the above-described premises. Failing this, legal proceedings will be instituted against you to recover possession of said premises, to declare a forfeiture of the agreement under which you occupy said premises and to recover damages, plus costs and attorneys' fees.

Declaration of COVID-19 Related Financial Distress. Landlords may not evict tenants for nonpayment of rent that became due between September 1, 2020 and June 30, 2021 if the tenant returns to the landlord a declaration of COVID-19-Related financial distress and pays at least 25 percent (25%) of the rent owed during that period **by no later than June 30, 2021**. The tenant must provide the landlord the declaration under penalty of perjury for every month that the tenant cannot pay due to adverse financial impacts of COVID-19 and return it to the landlord within fifteen (15) days of receiving notice of non-payment from the landlord.

THE DECLARATION OF COVID-19 RELATED FINANCIAL DISTRESS form must be provided to a tenant with every fifteen (15) day notice provided. The form provided by and available on the website of the Apartment Association of Greater Los Angeles. This declaration is available in the Apartment Association of Greater Los Angeles Forms Library (see Form K.2).



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DECLARATION OF COVID-19 RELATED FINANCIAL DISTRESS

(This Form May Be Used With Both .B. 3088 and S.B. 91)

Apt No.: _____

TENANT(s) / RENTER(s): _____

PREMISES: _____
(Street Address) (City) (Zip Code)

I / WE HEREBY DECLARE THAT I am / We are currently unable to pay my rent or other financial obligations under the lease in full because of one or more of the following (Please, check one or more boxes or none, and sign where indicated below):

Frequently Asked Questions (FAQs). These frequently asked questions or FAQs are general in nature and not specific to any local jurisdiction. Landlords are, therefore, advised to seek legal advice pertinent to their specific situation.

- **Rental Assistance Funding:**

Q: When will the \$2.6 billion of rental assistance be available? When can I and/or my tenants apply?

A: The Federal Government has already distributed the relief funds to the State of California. Senate Bill 91 dictates that the state must begin distributing the Federal relief funds by March 15, 2021. The California Department of Housing and Community Development will be responsible for distributing the relief funds. Additional information about the extension of the COVID-19 Tenant Relief Act and new state or local rental assistance programs, including more information about how to qualify for assistance, can be found by visiting <http://housingiskey.com> or by calling 1(833) 422-4255.

Q: What are the eligibility requirements for the rental assistance program?

A: To be eligible for rental relief, at least one (1) person in the household must meet all the following requirements:

- A) At least one (1) per person must either (i) qualify for unemployment benefits or (ii) have experienced a reduction in household income, incurred significant costs, or experienced financial hardship due to COVID-19 financial related impacts.
- B) At least one (1) person must be able to demonstrate risk of homelessness or housing instability by either (i) a past due utility bill or rent payment obligation, (ii) unsafe or unhealthy living conditions, or (iii) other qualifying evidence of homelessness risk as determined by the California Department of Housing and Community Development.

- C) Total household income at or below 80% of the area median income for the county in which the rental property is located (as determined by the U.S. Department of Housing and Urban Development).

Despite meeting the above three criteria, availability of rental assistance is not guaranteed. While pursuant to applicable Federal rules, Senate Bill 91's rental assistance program is being made available to eligible tenants whose household income is no more than 80% of an area median income (AMI) for the 2020 calendar year, priority is to be given to tenants whose household incomes are no more than 50% of the area median mean income.

Household income is either measured based upon household income during 2020 or at the time of making of the application and must cover a three (3) month period.

Q: May I apply for rental assistance on behalf of my tenants?

A: You may, yes. The California Department of Housing and Community Development allows landlords to apply directly. The application process requires that housing providers and renters work together; however, the process of applying, documentation requirements and timing of applications has not yet been determined as of the date hereof (February 6, 2021).

Q: How much money am I entitled to receive under the rental assistance fund?

A: Eligible landlords will be entitled to receive 80% of past due and owing rent covering the period of April 1, 2020 through and including March 31, 2021.

Q: After payment of the 80% of rental debt owed to me, when can I collect the 20%?

A: You cannot collect the balance of rent due, or the remaining 20%. Moreover, you will not be able to evict your renter for failure to pay the remaining 20%, nor will you be entitled to pursue collection of the remaining 20% at any time. As an account would describe it, the 20% becomes a "write-off."

By accepting the rental assistance, you will be required to enter into an agreement stating that you have agreed to accept the rental assistance as "payment in full" and to release all claims against your renter(s).

Q: Should I accept the 80% of rent owed under the state rental assistance program and write-off the balance due of 20%?

A: That is up to you. However, the likelihood of collecting what has now become thousands of dollars of rental debt will be challenging. Renters that ultimately vacate their rental units due to mounting rental debt, or that have timely completed and returned declarations of COVID-19 financial related distress covering March 1, 2020 through August 31, 2020 ("Protected Period"), and/or that pay at least 25% of rental debt owed for the period of September 1, 2020 through June 30, 2021 along with returning a declaration of COVID-19 financial related distress, are protected from eviction, and any rental debt becomes consumer debt, which can be problematic to later collect, particularly in full.

In addition, the courts can penalize landlords that fail to help tenants obtain rental relief. Under Senate Bill 91, the courts are empowered to reduce the damages awarded if the court determines that a landlord refused to obtain rental assistance from the State Rental Assistance Program created under Senate Bill 91 in instances where the tenant has met the eligibility requirements and where funding was available.

Q: What if I decide not to accept the rental assistance funding?

A: If you fail to accept the rental assistance funds covering 80% of rental debt owed between April 1, 2020 and March 31, 2021, your renter may still apply for rental assistance to cover 25% of rent owed between September 1, 2020 and March 31, 2021 and may also seek rental assistance to cover 25% of rental debt owed from April 1, 2021 to June 30, 2021 to avoid eviction. Under Senate Bill 91 (and Assembly Bill 3088 before it), if a renter provides a landlord with a signed declaration of COVID-19 financial distress and pays at least 25% of rent due on or before June 30, 2021, then a landlord may not seek an unlawful detainer (eviction) for the balance of rent then due, or 75%. The 75% balance is then converted into consumer debt that may be pursued in civil court or small claims court – good luck!

- ***Unpaid Rental Debt:***

Q: What is considered rental debt under the rental assistance program?

A: Rental debt includes all rent, fees, interest or any other financial obligations owed pursuant to a lease. Rental debt does not include amounts owned for damages or tort claims.

Q: Under local emergency-related eviction moratoriums, may a landlord evict a tenant for reasons other than non-payment of rent due to adverse COVID-19-related financial impacts?

A: In general, no. Under local COVID-19 emergency-related eviction moratorium protections for reasons other than nonpayment of rent remain in effect with some local jurisdictions having legally extended local emergency protections or having no expiration date such as the City of Los Angeles. Once a local jurisdiction's local eviction moratorium protections expire, just cause for eviction protections, if applicable, will continue to remain in full force, and are not affected by the expiration of the local jurisdiction's eviction moratorium. Local eviction moratoriums: however, do provide allowances for evictions when the health and safety of other renters at a property are at stake, but in general, until a local eviction moratorium expires, renters are protected from eviction.

Q: How does Senate Bill 91 impact “just cause” requirements under Assembly Bill 1482, the state’s rent control and tenant protection law?

A: Just cause protections under Senate Bill 91 are now extended to properties that had been previously exempt under Assembly Bill 1482, including single-family homes, condominiums, and new construction. Tenants are protected from the first day of occupancy (e.g., not following one year of tenancy).

Q: What happens if there is also a local eviction moratorium in place where I own a rental property? What is the interplay between state and local law?

A: In general, local eviction moratoria adopted in response to the COVID-19 pandemic that are set to expire before June 30, 2021 can remain in place until their expiration date but cannot be extended or renewed.

If a local eviction moratorium provides for repayment of back due rent to begin after August 1, 2021, or ties repayment to the end of the state of emergency or local emergency, that repayment period is required to start on or before August 1, 2021 and end by August 31, 2022. Repayment periods that are set to begin prior to August 1, 2021 cannot be extended. The state legislature has declared that nothing in the new law shall be construed to provide the legislature's understanding of the legal validity on any specific local ordinance.

Q: Despite the passage of Senate Bill 91, can rent still be deferred by a tenant due to COVID-19-related financial distress until the local eviction moratorium has expired?

A: In general, yes. For example, if the local jurisdiction's eviction moratorium expired on October 31, 2020, a tenant may still fully defer rent under the local eviction moratorium, but November and later rent cannot be. The provisions of Senate Bill 91 would then be applicable starting on November 1, 2020 in this example, and the tenant would still be responsible for paying 25% of rent due between November 1, 2020 and June 30, 2021 on or before June 30, 2021.

Q: What happens if rent is not paid when due for the period beginning July 1, 2021 and thereafter?

A: If there is no eviction moratorium either locally or statewide (if further extended), the owner can seek to collect rent that comes due for months starting February 1, 2021 under normal rules. If there is a local eviction moratorium still in place or passed to be in place, the term of that moratorium must be complied with.

Q: May a landlord still give a tenant notice for non-payment of rent?

A: Yes. If allowed by local eviction moratorium. However, the notice must provide 15 days instead of just three (3) days to pay.

Q: What is the protocol when a tenant does not pay rent?

A: When a tenant cannot pay their rent in full because of lost income or increased expenses due to the financial impacts of COVID-19, they may still be protected from eviction. Under Senate Bill 91, like Assembly Bill 3088 before it, any notice to pay rent or quit must provide a tenant with fifteen (15) days' notice to pay and must include a "Declaration of COVID-19-Related Financial Distress" form which the tenant must complete and sign under penalty of perjury in order to be protected from eviction.

The "Declaration of COVID-19-Related Financial Distress" form is available on the Apartment Association of Greater Los Angeles website. It declares that a tenant cannot pay their rent because of effects of the COVID-19 pandemic. To be protected by the state law, a tenant must sign and

return the Declaration of COVID-19-Related Financial Distress form to their landlord within the 15 days given to pay rent.

For local jurisdictions still under a local eviction moratorium, landlords should continue to provide notice and documentation required by the local jurisdiction's moratorium and as required by state law, including the Declaration of COVID-19-Related Financial Distress form.

Q: Have my tenant's repayment deadlines changed due to the new state law?

A: Yes. The specified period of time during which a tenant is permitted to repay COVID-19 rental debt may not extend beyond the period that was in effect on August 19, 2020. If the provision in effect on August 19, 2020, required the repayment period to commence on a specific date after August 1, 2021, or conditioned commencement of the repayment period on the termination of a proclamation of state of emergency or local emergency, the repayment period is deemed to begin on August 1, 2021. In addition, a provision may not permit a tenant a period of time that extends beyond August 31, 2022, to repay COVID-19 rental debt.

Q: What other options exist for collecting past due rent?

A: Senate Bill 91 allows unpaid rent and other charges due between March 1, 2020 and June 30, 2021 to be collected through small claims court. Existing small claims court limits will not apply. These small claims cases may not be filed; however, before August 1, 2021. However, landlords accepting the 80% rental assistance offered through the state may not seek to collect the remaining 20% of rent owed and may not evict their tenants on the basis of 20% of rent being owed.

Q: How should a landlord serve the various notices and the Declaration of COVID-19-Related Financial Distress form?

A: Landlords may serve notices and a copy of the Declaration of COVID-19-Related Financial Distress form in person or posted on the tenant's door and mailed first class mail. You may also serve via overnight courier, certified mail or by other means. We do not suggest using email or text messaging.

It is important to maintain proof that the notices and/or the Declaration of COVID-19-Related Financial Distress form were delivered. For example, if you mail the declaration, you should obtain proof of mailing or proof of service from the Post Office and take a picture of the signed declaration alongside the addressed envelope.

IMPORTANT: It is suggested owners keep in their records a copy of each such notice and a standard form "Proof of Service" as evidence of providing this notice in addition to any other documentation (e.g., certified return receipt). Do not provide a copy of the proof of service to your tenant. This is for your records only.

Q: Do tenants have to provide any documentation to prove inability to pay?

A: Many tenants do not have to provide documentation other than the signed Declaration of COVID-19-Related Financial Distress form. However, "High-income tenants" (those earning more than

\$100,000 in household income or more than 130 percent of median household income, whichever is greater) must provide documentation to support their declaration upon a landlord's request. However, a landlord may only require documentation if the landlord has evidence of "high-income tenant" status in the landlord's possession before serving a nonpayment eviction notice.

In other words, if a landlord's records contain a tenant's application and screening that indicates a tenant is a "High-Income Tenant," then a landlord may require proof of COVID-19-Related Distress.

Q: What happens when a tenant does not return the signed Declaration of COVID-19-Related Financial Distress form on time?

A: To be protected, a tenant must sign and return the signed Declaration of COVID-19-Related Financial Distress form within the 15-day time given in the eviction notice. However, if a tenant does not do so on time, the tenant may be able to do so later in any court action that is filed if the tenant can provide a good reason why he or she did not return the declaration within the 15-day period.

Q: May I evict a tenant for non-payment of rent that became due after March 1, 2020?

A: If the non-payment of rent was not due to COVID-19 related financial distress, then yes. If; however, the rental debt was incurred due to COVID-19 related financial distress, you may evict your tenant only for rent that becomes due after July 1, 2021. Landlords are prohibited from evicting a tenant for non-payment of rent or other charges that came due between March 1, 2020 and June 30, 2021 if the tenant does both of the following: (i) provides the landlord with a declaration (e.g., "Declaration of COVID-19 Related Financial Distress" form) stating their finances have been negatively affected by the COVID-19 pandemic (and documentation, if required for a high-income resident); and, (ii) by June 30, 2021, pays 25 percent of the rental payments due between September 1, 2020 and June 30, 2021 that were missed because the resident experienced COVID-19-related financial distress, (iii) or the tenant applies for relief under the state's rental assistance program and the landlord receives 80% of rent due for the period April 1, 2020 through March 31, 2021.

Q: If I do receive payment from my tenant, how do I apply it?

A: Senate Bill 91 prohibits application of rental payments received to be applied to COVID-19 rental debt incurred between March 1, 2020 and June 30, 2021, and such payment must be applied to future rent unless otherwise agreed to by the tenant.

Q: May I apply my renter's security deposit to past due rent?

A: No, you may not unless consented to by your tenant. Senate Bill 91 prohibits the application of security deposits to rental debt for periods between March 1, 2020 and June 30, 2021.

• **Miscellaneous.**

Q: Does Senate Bill 91 prohibit me from increasing rent?

A: No, it does not.

Q: I'm confused. Which law should I comply with, my local jurisdiction's law or state law under Senate Bill 91?

A: Landlords should comply with both the local jurisdiction's moratorium and the state law. This means that landlords should provide notices and documentation under the local jurisdiction's moratorium and notices as required under state law.

Q: Should I seek legal help?

A: Having local, state and now Federal eviction moratoriums, there is potential for conflict among each of the competing regulations and there is lots of potential for conflict. Also, every situation is different, so it is advised that you seek competent legal counsel before acting.

Q: What information are landlords required to give tenants about Senate Bill 91, the new state law?

A: Landlords are required to give an informational notice about the new law to any residents who, as of February 1, 2020, have missed one or more payments that came due between March 1 and January 31, 2021. The Apartment Association has created a "Notice of COVID-19 Tenant Relief Act" form for this purpose. **This new notice is due on or before February 28, 2021** (see Form K.1).

Q: Are notices, such as the three (3) day notices to pay or quit forms still applicable under the new state law?

A: Yes and no. Senate Bill 91 requires a landlord to give a 15-day notice (versus 3-day notice) before seeking to evict for any unpaid rent or other charges due between March 1, 2020 and June 30, 2021. The 15-day period does not include Saturdays, Sundays, or judicial (legal) holidays.

Q: How does Senate Bill 91 change the "just-cause" eviction rules under Assembly Bill 1482, the state rent control and tenant protection law that just went into effect on January 1, 2020?

A: Senate Bill 91 extends "just cause" protections under Assembly Bill 1482 to all residents until July 1, 2021, with limited exceptions. Eviction for demolition or "substantial rehabilitation" is temporarily limited to circumstances necessary to comply with health and safety laws.

Q: How are the courts handling eviction cases?

A: The temporary emergency court rules that effectively delayed most evictions have been lifted. Senate Bill 91 also prohibits unlawful detainer (eviction) actions against tenants with COVID-19-related financial distress for non-payment of rent and other charges due between September 1, 2020 and June 30, 2021 until July 1, 2021.

Q: Even though a tenant cannot be evicted, is the rent still owed?

A: Yes, neither a local jurisdiction's Eviction Moratorium nor the state law cancels rent. While the state law protects tenants from eviction for nonpayment of rent during the covered periods, the unpaid

rents are still owed to the landlord as a form of consumer debt, and a landlord can sue a tenant to recover and collect the unpaid rents in small claims courts or other civil courts. The new state law provides that landlords may not sue to try to collect rent that became due between March 1, 2020 and June 30, 2021, until August 1, 2021. However, while the new state law provides eviction protection for rent due during the Protected Period and Transitional Period, it does not change the due date for rent under any local eviction moratorium still in effect.

Q: Does the state law affect eviction for reasons other than nonpayment, such as a lease violation or nuisance?

A: No. The state law does not affect evictions for reasons other than nonpayment due to the impacts of the COVID-19 emergency. A local jurisdiction's eviction moratorium for COVID-19 emergency-related protections against evictions that are based on other reasons besides nonpayment of rent (such as nuisance, unauthorized occupants) will likely remain in effect until the local eviction moratorium expires. After that, the COVID-19 emergency-related protections expire, but tenants may still be protected by other laws, such as a local jurisdiction's just-cause for eviction requirements.

However, the state's or local jurisdiction's "just cause" eviction rules are applicable with respect to any eviction matter.

Q: What happens when the local jurisdiction's eviction moratorium expires?

A: The new state law blocks the local jurisdiction from extending its local eviction moratorium beyond until July 1, 2021. Following expiration of the local eviction moratorium, there are no longer any COVID-19 emergency-related protections from eviction for reasons other than nonpayment. Just as before the local eviction moratorium, a landlord could give you an eviction notice and may be able to evict a tenant for committing a nuisance or having an unauthorized occupant living with the tenant, among other reasons.

Q: May I deny a rental application due to an applicant's COVID-19 related rental debt?

A: No, you may not. Senate Bill 91 prohibits a landlord, tenant screening company or any other entity for denying a rental application due to the existence of an applicant's unpaid COVID-19 related rental debt (e.g., amounts due from March 1, 2020 through June 30, 2021). This requirement only applies if the applicant's non-payment of rent was due to COVID-19 related financial distress.

Q: How have unlawful detainer rental debt collection cases changed under Senate Bill 91?

A: Some of the Senate Bill 91 changes to court cases include:

- There are limitations on recovery of reasonable attorney fees of \$500 or \$1,000 for contested matters.
- Minor changes to unlawful detainer cases require the court to verify with the landlord prior to entering a judgment: (i) that the landlord has not received rental assistance or rent payments from any other sources; and (ii) that the landlord does not have a pending application for rental assistance or other source to pay rent owed.

- Until July 1, 2025 (from March 1, 2025 under Assembly Bill 3088), small claims court cases may be brought to recover COVID-19 related rental debt without limitation of amount being sought.
- In seeking recovery of COVID-19 related rent debt in either small claims court or civil court, landlords must now provide additional documentation showing they have made good faith efforts were made to apply for or assist tenant's efforts to apply for rental assistance.

Got Questions? We've Got Your Answers...For More Information:

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