

# Assembly Bill 828 – Stop Evictions & Foreclosures for those Affected by COVID-19

## Letter from Task Force to California Judicial Council (page 1 of 3)



Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, CA 94102

Re: Request for Amendment to Emergency Rule 1 adopted on April 6, 2020

To: The Honorable Chief Justice Tani G. Cantil-Sakauye and  
Esteemed Members of the Judicial Council:

The California Rental Housing Association (CalRHA) represents 22,000+ rental housing providers and management companies with more than 514,000 rental units. CalRHA's members are made up of small, medium, and larger rental housing owners throughout the state. We support a holistic regulatory effort to maintain renters in place during the COVID-19 state of emergency. However, we are extremely concerned with the substance and scope of the Judicial Council's emergency court rules adopted at the Judicial Council's April 6, 2020 emergency meeting. Of particular concern is Emergency Rule 1 – Unlawful Detainers ("Emergency Rule 1").

In the interest of comity, and without waiving the right of CalRHA, its Affiliates or Affiliates' members to later challenge the propriety of Emergency Rule 1, we ask that the Judicial Council amend Emergency Rule 1 to recognize and allow non-COVID-19 unlawful detainers to proceed, particularly because Emergency Rule 1 (A) encourages renters to "game the system" and (2) makes it nearly impossible for a rental housing provider to protect residents who depend on their provider to keep order when faced with renters who materially breach "behavior" covenants in rental agreements or flout laws such as creating a nuisance. Stated another way, Emergency Rule 1 has many unintended consequences unrelated to keeping renters adversely affected by the COVID-19 pandemic, sheltered in place.

In Emergency Rule 1(e) you reserve the right to amend this rule. We are asking you to do so now, due to the unintended consequences of the enactment of Emergency Rule 1. You have received many letters regarding requests for reconsideration. Ours will be different. We will cut to the chase.

We request your consideration of the following amendments to California Rules of Court, Rule 1.

### **Emergency rule 1. Unlawful detainers**

#### **(a) Application**

Notwithstanding any other law, including Code of Civil Procedure sections 1166, 1167, 1169, and 1170.5, this rule applies to all actions for unlawful detainer.

#### **(b) Issuance of summons**

A court shall issue a summons on a complaint for unlawful detainer if the court finds, in its discretion and on the record, that the action is brought against a defendant who

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has not been significantly, financially affected by the COVID-19 pandemic or is necessary to allow the Plaintiff to fulfill his/her duties to other renters or neighboring properties. A Plaintiff's declaration provided under penalty of perjury that the Plaintiff has either (a) not received notice from the defendant(s) that the defendant(s) have been adversely affected by COVID-19 or (b) even if Plaintiff has received such notice, the action is necessary to enforce a rental agreement's provisions or a local jurisdiction's or court's order pertaining to the maintenance of the peace or health and safety of the occupants, other residents or neighboring properties. Nothing herein shall bar a defendant from raising the affirmative defense that the action is a violation of state or local COVID-19 restrictions to unlawful detainer actions.

#### **(c) Entry of default**

A court may not enter a default or a default judgment for restitution of possession of property in an unlawful detainer action for failure of defendant to appear unless the court finds:

- (1) The action was brought pursuant to Rule 1(b), above; and
- (2) The defendant has not appeared in the action within the time provided by law, including by any applicable executive order.

In such case, the court shall deem the defendant(s) to have filed a general denial and set the matter for trial pursuant to rule 1(d).

#### **(d) Time for trial**

If a defendant has appeared in the action, the court shall set a trial date pursuant to existing non-emergency rules unless the court finds that the defendant(s) has been, and continues to be, significantly and financially adversely affected by the COVID-19 pandemic. Even if the defendant(s) has been adversely affected by the COVID-19 pandemic, regular statutory times for trial will remain in force if the court finds that the action is necessary to protect against a threat to public health and safety. Any trial set in an unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days from the initial date of trial unless the court finds that an earlier trial is necessary as set forth herein.

#### **(e) Sunset of rule**

This rule will remain in effect until the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

The Judicial Council is charged with the administration of justice within the court system in California. The Judicial Council is not charged with promulgating social policy. That is the province of the Governor and legislature. While the Governor, in Executive Order N-38-20, substantially increased the power of the Judicial Council, that expansion was limited as follows: "This paragraph is intended to remove any impediment that would otherwise prevent the Chairperson from authorizing, by emergency order or statewide rule, any court to take any action she deems necessary *to maintain the safe and orderly operation of that court.* [Emphasis added.] Executive Order N-38-20 was not a blank check allowing the Judicial Council to deny one class of litigants its meaningful access to the courts.

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CalRHA, together with other rental housing providers are the means by which California's renters are able to shelter in place. Our concern is that Emergency Rule 1 goes significantly beyond the restrictions already enacted by both the Governor and many local jurisdictions with respect to keeping renters that are adversely affected by COVID-19 housed in place during the pendency of the pandemic.

We are asking that rental housing providers:

- 1) be allowed to have his/her day in court;
- 2) HAVE a level playing field; AND
- 3) be allowed to proceed unless the court finds the circumstances provided in our proposed amendments to Emergency Rule 1.

These unprecedented times require widespread sacrifice. However, by passing Emergency Rule 1, the Judicial Council has placed the burden exclusively on rental housing providers in a way that will have lasting and severe consequences going forward. We respectfully ask the Council to consider these amendments that will bring the processing of unlawful detainer cases during this pandemic in line with the Governor's Executive Order N-37-20.

We appreciate your time and attention to this letter with its proposal for amendment of California Rules of Court, Rule 1 and stand ready to supply any further information or clarification that you may request.

Sincerely yours,

  
Betty L. Jeppesen (Apr 14, 2020)

Betty L. Jeppesen, Chair  
CalRHA Legal Affairs Subcommittee

  
Jack Schwartz Jr. (Apr 15, 2020)

Jack Schwartz Jr.  
CalRHA Legislative Chair

cc: Governor Newsom