

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

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. 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. 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. AB 3088 also provides certain protections against foreclosure by encouraging mortgage services to grant forbearance requests to limited, statutorily defined small landlords.

Below is a partial 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:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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).
7. 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.