

COVID-19 U.S.: Impact on real estate evictions – Federal and California updates

April 9, 2020

In response to the unprecedented economic impact of the coronavirus (COVID-19) pandemic, wide-spread measures limiting evictions for both residential and commercial tenants who are unable to pay rent due to COVID-19 have been enacted by the federal government and many state and local governments. Though the measures governing evictions are subject to change as the situation around COVID-19 continues to evolve, some of the current measures are summarized in this publication.

Federal action

CARES Act

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law that provides a 120-day moratorium on new evictions of residential tenants living in federally-backed housing for non-payment of rent. Specifically, a tenant may not be served with an eviction notice until July 25, 2020, and the notice must give the tenant 30 days to leave the property. Thus, the soonest a tenant can actually be evicted is August 24, 2020. Additionally, during the 120-day eviction moratorium, landlords may not charge late fees, penalties, or other charges for paying rent late.

Specifically, the properties covered by the CARES Act are those¹:

1. with a federally backed mortgage loan;
2. that “participate in” a “covered housing program” as defined in the Violence Against Women Act (VAWA); or
3. that participate in the Rural Housing Voucher Program (Section 542).

Federally backed mortgage loans are those that are:

1. made, insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the federal government, or

¹ See CARES Act, §4024.

2. purchased or securitized by the Federal Home Loan Mortgage Corporation (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae).

Under VAWA, [covered programs include](#):

- the low-income housing tax credit (LIHTC) program,
- public housing,
- Section 8 Housing Choice Voucher program,
- project-based Section 8 housing,
- Section 202 supportive housing for the elderly,
- Section 811 supportive housing for persons with disabilities,
- Section 236 multifamily rental housing,
- Section 221(d)(3) Below Market Interest Rate housing,
- [HOME Investment Partnerships](#),
- Housing Opportunities for Persons with AIDS,
- McKinney-Vento Act programs, and
- USDA Rural Development program.

On the other hand, the federal eviction moratorium does not affect the following situations:

1. evictions filed before the moratorium took effect or that are filed after it expires;
2. cases that involve non-covered tenancies (see above); or
3. where the eviction is based on a reason other than nonpayment of rent or nonpayment of other fees or charges.

However, for cases that are not barred by the federal moratorium, landlords should check whether any state or local eviction moratorium is in place. Landlords should also check to see if any state or local moratorium provides more expansive protections than those provided by the federal moratorium.

Commercial impact: The CARES Act does not implement a moratorium on foreclosures by lenders upon commercial borrowers, or impose any bans on the eviction of commercial tenants. Instead, such measures, to the extent they exist, are being implemented at the state and local levels.

California

California state-wide executive order

On March 27, 2020, Governor Gavin Newsom enacted executive order N-37-20 (Executive Order), which is a state-wide moratorium on residential evictions for failure to pay rent for renters affected by COVID-19. The order took effect immediately and will remain in effect through May 31, 2020.

Under this Executive Order, all California renters can delay eviction through May 31 if they can't pay rent because of financial or medical circumstances caused by COVID-19. However, the Executive Order does not expressly prohibit landlords from imposing late fees or charging interest on late payments. Additionally, the Executive Order does not ban evictions for reasons other than a tenant's failure to pay rent, such as when a tenant is otherwise in violation of their lease.

To qualify for protection under the Executive Order, renters must have either (1) lost their job or hours at work due to COVID-19 or (2) have had to take care of children whose schools are closed, or a family member with COVID-19. Additionally, tenants must notify their landlords in writing no later than seven days after their rent is due if they are unable to pay and must provide verifiable documentation explaining the tenants changed financial circumstances. Examples of such documents include, but are not limited to: termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters from an employer or supervisor.

It is noteworthy that the Executive Order does not relieve tenants of their liability for unpaid rent. Thus, tenants are ultimately responsible for all back rent in full.

Commercial impact: The statewide executive order by Governor Newsom currently applies only to residential tenants. However, some local governments have enacted various eviction moratoriums that apply to both residential and commercial tenants. It appears from Governor Newsom's order that if a local moratorium provides greater protections, the local moratorium applies.

Moreover, California lawmakers announced forthcoming action when the legislature reconvenes in April that would provide temporary bans on commercial evictions and foreclosures.

Los Angeles local government

Throughout the month of March, Los Angeles Mayor Eric Garcetti issued several public orders regarding tenant protections amidst the coronavirus pandemic. On March 31, 2020, Mayor Garcetti signed Ordinance No. 186585 (the City Ordinance). Per the City Ordinance, landlords cannot evict tenants who are unable to pay rent because of loss of income from work, childcare costs related to school closures, healthcare costs, or "reasonable expenditures" related to COVID-19. The City Ordinance took effect immediately and retroactively applies beginning on March 4, 2020.

Affected tenants will have up to a year after the city's emergency order expires to pay back rent, and all late fees and interest for nonpayment will be waived. Therefore, while the City Ordinance buys tenants time to make up any missed rent payments, it does not absolve a tenant from the obligation of paying that rent.

Further, owners of residential property in Los Angeles may not evict a tenant based on the presence of unauthorized occupants, pets, or any nuisance related to COVID-19. Also protected from eviction are tenants being evicted for reasons that are not their fault. "No-fault" evictions include instances where a landlord might want to tear down the building or take the unit for a family member. Evictions under the Ellis Act, which owners of rent-controlled buildings invoke when they want to demolish their buildings or remove them from the rental market, are also halted and are not allowed to resume until 60 days after the end of the local emergency period.

Finally, owners of residential property are required to provide affirmative written notice to residential tenants of the protections afforded by the City Ordinance. Such notice must be

provided within thirty days of the effective date of the City Ordinance (by April 30, 2020), and failure to provide this notice may result in monetary penalties.

Terms of the ban on rent increases for rent-controlled units: In addition to the City Ordinance signed on March 31, 2020, on March 30, 2020, Mayor Garcetti enacted an order preventing residential landlords from increasing rents on rent controlled units that are subject to the Los Angeles Rent Stabilization Ordinance (RSO). Single-family rentals and most newer apartments, which are not subject to rent control, are unaffected by the rent freeze order.

The order went into effect immediately and remains in effect for sixty days following the expiration of the local emergency period.

Commercial impact: Under the City Ordinance, commercial landlords cannot evict commercial tenants if the tenant is unable to pay rent due to circumstances related to the COVID-19 pandemic.

However, the City Ordinance only applies to certain commercial tenants. To qualify for protections under the City Ordinance, a commercial tenant may not be any of the following:

1. a multi-national company,
2. a publicly traded company, or
3. a company that employs more than 500 employees.

For commercial tenants that do not fall within any of these three categories, the tenant may not be evicted for failure to pay rent due to circumstances related to the coronavirus. Furthermore, commercial tenants that qualify under the City Ordinance will have three months following the expiration of the local emergency period to repay any unpaid rent without any interest or late fees on any unpaid rent.

Other California local governments

More than 80 local governments throughout California - including San Diego, San Jose, Fresno, and San Francisco - have enacted some form of a temporary eviction ban, all of which may have slightly different rules governing residential and commercial evictions. Most of these measures provide protections beyond those offered by the federal and state governments.

The above represents our latest thinking in “real time” and will likely evolve over the coming weeks and months. Our teams of lawyers across the globe are continuing to compile the latest thinking and legal guidance on the coronavirus outbreak. To track our latest updates, which will include more specific discussions of particular contractual concepts, we encourage you to check the Hogan Lovells [COVID-19 Topic Center](#), which covers a wide variety of practice areas across the globe. To access guidance on similar topics provided by our lawyers in the U.S., click [here](#) and [here](#). To learn more about similar topics in other jurisdictions please click [here](#) and [here](#).

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