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## **Unlawful Detainer Actions during the COVID-19 Pandemic (AB 3088)**

Last updated September 2, 2020

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### **Frequently Asked Questions (FAQs)<sup>1</sup>**

This FAQ provides answers to legal questions about the Tenant, Homeowner, and Small Landlord Relief Act of 2020 (AB 3088). It has been prepared by the Judicial Council's Legal Services office and will be updated as new questions are addressed. The answers provided are general in nature and may differ depending upon a particular situation. In addition, answers may change as more federal and state law develops about the COVID-19 pandemic and its impact on housing issues. In particular, the impact of the new federal Eviction Moratorium Order from the Centers for Disease Control and Protection (CDC) on residential evictions is currently still being evaluated and will be addressed in further FAQs shortly.

To assist courts in quickly reviewing new or amended questions and answers, each answer will indicate the date on which it was added to this document.

Please feel free to contact the Legal Services office if you have additional questions. Contacts in the Legal Services office are included in the last section of the FAQs.

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Opinion of the Legal Services office, not of the Judicial Council

**1. What happened to emergency rule 1?**

Emergency rule 1 prohibited, after April 6, 2020, the issuance of a summons on any unlawful detainer complaint or a default judgment on any pending unlawful detainer action, except on a showing that the action was needed to address public health and safety issues. It also provided that trials should be set at least 60 days after the request for a trial date. The rule has been amended to sunset on September 1, 2020, with the rule's prohibition on summons and default judgment ending after that date. As provided in the emergency rule, trials that have been set as of September 1 may remain set on the scheduled date even after the rule sunsets. (09/02/20)

**2. When does AB 3088 go into effect and where can it be found?**

AB 3088, the Tenant, Homeowner, and Small Landlord Relief Act of 2020, was passed as urgency legislation and so is effective immediately upon signing by the Governor. The law was signed, and so became effective, on August 31, 2020, but the emergency rules remain in effect through September 1 (see AB 3088 at sec. 2(b)) and some court actions are stayed until October 5. (§ 1179.01.05.<sup>2</sup>) The text of the law can be viewed at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB3088](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3088). (09/02/20)

**3. What is the CDC Eviction Moratorium Order and how does it impact California cases?**

On September 1, 2020, the federal Centers for Disease Control issued an agency order, *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19* (CDC Eviction Moratorium Order), which is to be published in the Federal Register as of September 4, 2020 and will be effective as of that date. The CDC Eviction Moratorium Order prohibits a landlord from taking any action to evict certain tenants through December 31, 2020. The federal moratorium applies:

- for failures to pay rent, with evictions for reasons other than failures to pay rent permitted to proceed;
- to residential tenancies only;
- to tenants who expect to earn no more than \$99,000 in 2020 (or no more than \$198,000 if filing a joint return);

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<sup>2</sup> All statutory references in these FAQs are to the Code of Civil Procedure unless otherwise noted.

- to tenants who (along with each adult member of the household) provide the landlord with a declaration that states, among other things, that they are unable to pay full rent due to loss of income or extraordinarily high medical expenses; and
- only through December 31, 2020, with evictions for any unpaid rent permitted after that.

The CDC Eviction Moratorium Order does not apply where a state or local eviction moratorium provides the same or greater level of public-health protections than the requirements in the order. In some instances, judicial determinations may be necessary to determine which law provides more protection and therefore, applies. Council staff will be evaluating the impact of the federal moratorium on unlawful detainers based on failure to pay rent in the coming days and will amend the FAQs as appropriate. Answers below that are marked with an asterisk, which were prepared before the federal eviction moratorium order was issued, may need to be revised when a further review of the federal order is completed.

Initially, we note that the CDC Eviction Moratorium Order does not provide protection for, and therefore, does *not* impact the provisions of AB 3088 addressing unlawful detainer actions:

- on commercial properties,
- on residential properties if the tenant is a high-income tenant under the new state law, or
- brought for any reason other than failure to pay rent.

(09/02/20)

#### 4. What is “COVID-19 rental debt”?

AB 3088 defines COVID-19 rental debt as unpaid rent that came due between March 1, 2020 and January 31, 2021. (§ 1179.02(a) and (c).) (09/02/20)

#### 5. Are all unlawful detainer actions able to proceed as of September 2, 2020 when the emergency rule ends, and AB 3088 applies?

No. Under AB 3088:

- the court is not to issue any summon or any defaults in unlawful detainer actions for *residential* tenancies (including for mobile homes) based in whole or in part on *failure to pay rent*, until October 5, 2020. (§ 1179.01.5(b).)
- Other unlawful detainers, for *commercial* properties or *solely* for reasons other than failure to pay rent, may proceed unless a local ordinance provides otherwise. (See FAQ no. 14 below regarding the impact of local ordinances.)

(09/02/20)

**6. How will a court know if a summons can be issued in an unlawful detainer action *before* October 5, 2020?**

AB 3088 requires that the plaintiff file with each unlawful detainer complaint a cover sheet stating whether the property at issue is residential or commercial, and whether the reason for termination is based in whole or in part on failure to pay rent. (§ 1179.01.5(c).) Based on that information, courts will be able to tell if it is an action where no summons may be issued until October 5. (09/02/20)

**7. What happens as of September 2, 2020, with new unlawful detainer filings?**

- *Action on commercial property:* Tenants on commercial properties are expressly exempted from the definition of “tenant” in AB 3088. (§ 1179.02(h).) As of September 2, 2020, unlawful detainer actions for commercial properties may be handled as they would have been before emergency rule 1 went into effect, unless there is a local ordinance already in effect by August 19 providing otherwise.
- *Action on a residential property, based in whole or in part on failure to pay rent:* the court can accept such a filing but may not issue a summons until October 5. (Code Civ. Proc., § 1179.01.5(b).) After that date, such cases may proceed, but with the changes in law described in FAQ no. 10.\*<sup>3</sup>
- *Action on a residential property, based solely on reasons other than failure to pay rent:* As of September 2, 2020, these actions may proceed unless there is a local ordinance in effect by August 19 providing otherwise. The law on obtaining judgment in such cases has changed under AB 3088. Until February 1, 2021, a judgment in such an action may only be issued if just cause exists for the termination of the tenancy, as defined in Civil Code section 1946.2. (§ 1179.03.5(a)(3).) (One of the just cause provisions—intent to demolish or remodel—is only applicable if it is to remedy a habitability issue. (§ 1179.03.5(a)(3)(ii).))

(09/02/20)

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<sup>3</sup> \*This answer and others that are marked with an asterisk may need to be revised when a further review of the impact of the CDC Eviction Moratorium Order is completed.

**8. What happens as of September 2, 2020, with unlawful detainer actions pending in the court now?**

Any pending actions that are for *residential* properties and based on failure to pay rent after March 1, 2020, and are based on a 3-day notice that, under AB 3088, is no longer sufficient to establish an unlawful detainer cause of action or to serve as the basis of a default judgment. (§ 1179.03(a)(1).)

- If the pending action is on a *residential* property and
  - based on failure to pay rent that was due before March 1, 2020 and awaiting trial (summons already issued and answered), same status as under the emergency rules: case may proceed to trial. (§ 1179.03.5).\*
  - based solely on failure to pay rent (that is, the action is based solely on a 3-day notice to pay rent or quit) and that rent was due after March 1, 2020: the case may be dismissed by the court at any time before judgment has issued. (§ 1179.03(a)(2) and (3).)
  - based in part on failure to pay rent (that is, a 3-day notice to pay rent or quit is one of the notices provided) that was due after March 1, 2020: no summons or default may be issued by court until October 5. (§ 1179.01.5)
  - based solely on reasons other than failure to pay rent (that is, the action is based on notice other than pay rent or quit): the action may proceed on that other claim unless there is a local ordinance that provides otherwise. But, note that, until February 1, 2021, a judgment in such an action may only be issued if just cause exists for the termination of the tenancy, as described in Civil Code section 1946.2. (§ 1179.03.5(a)(3).) These provisions for just cause include terminations based on unauthorized subletting, failure to comply with conditions in the lease, nuisance, waste, criminal activities and criminal threats. (One of the just cause provisions—intent to demolish or remodel—is only applicable if it is to remedy a habitability issue. (§ 1179.03.5(a)(3)(ii).))
- If the action is on *commercial* property, it may move forward unless local ordinances apply, because the tenant protections in AB 3088 do not apply.  
(09/02/20)

**9. What happens as of October 5, 2020, with unlawful detainer filings?**

As of that date, parties may proceed with all unlawful detainer actions, including those for failure to pay rent. Pending actions based on failure to pay rent due before March 1, 2020, may proceed

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as before emergency rule 1 was enacted. (§ 1179.03.5(a)(1).) Actions based on demands for payment of COVID-19 rental debt (rent due March 1, 2020, or later) may only proceed to judgment before February 1, 2021, if at all, if the new AB 3088 notices and procedures described below are complied with.\* (09/02/20)

**10. How does AB 3088 change traditional unlawful detainer law for cases based on COVID-19 rental debt?**

AB 3088 provides for a new series of notices that a landlord must provide to tenants who have COVID-19 rental debt before the landlord may obtain an unlawful detainer judgment. If the tenant responds to the 15-day notices described below by serving a declaration of financial distress (and required documentation in support of the declaration if a “high-income tenant”), the landlord may not initiate an unlawful detainer action before February 1, 2021, if at all. The unpaid rents due may be recovered in a civil case as consumer debt. See FAQ no. 12.

- Before September 30, 2020, a landlord must provide any tenants who have not paid rent due at some time from March 1, 2020 to August 31, 2020, a notice from the State of California (the state notice), set out in section 1179.04, which describes the rights and responsibilities that tenants have under the new law. A landlord may not serve a 15-day notice to quit based on COVID-19 rental debt unless the state notice has been served (although both the state notice and the 15-day notice may be served at the same time). (§ 1179.04(c).)
- New and detailed 15-day notices to pay rent or quit or to perform covenants or quit must be served for any notice that demands payment of COVID-19 rental debt (under Civil Code § 798.56, § 1161, para. (2) or (3)), rather than the generally required 3-day notices. The 15-day notices must use the language set out in: (1) section 1179.03(b) (for rent due from March 1, 2020 through August 31, 2020—the protected period); (2) in section 1179.03(c) (for rent due from September 1 through January 31, 2021—the transitional period); or (3) in section 1179.02.5 for “high income” tenants.
- The 15-day notices must be accompanied by an unsigned “declaration of COVID-19-related financial distress” and inform the tenant that if the declaration under penalty of perjury is signed and returned to the landlord within 15 days, then either (for rent due during the protected period) no unlawful detainer judgment will ever issue based on the unpaid rent, or (for rent due during the transitional period) the landlord may not file an unlawful detainer action until February 1, 2021 and no unlawful detainer will issue if a minimum of 25% of the rent due is paid.

- If a tenant fails to return the declaration of financial distress within 15 days, the landlord may initiate an unlawful detainer action at that time. For judgments to issue on unlawful detainer complaints for failure to pay COVID-19 rental debt filed before February 1, 2021, the complaint will need to include allegations of serving each of the above notices, along with an allegation that the plaintiff did not timely return the declaration of financial distress or, for high income tenants, the documentation in support. (§ 1179.03.5.)\*
- If a tenant does return the declaration of fiscal distress within 15 days:
  - for COVID-19 related rental debt due during the protected period (from March 1 through August 31), the tenant shall never be deemed to be in default of that debt for purposes of an unlawful detainer. (§ 1179.03(g)(1).)
  - for COVID-19 related rental debt due during the transitional period (from September 1 through January 31), the landlord may not file an unlawful detainer action before February 1, 2021 and the tenant shall never be deemed to be in default of that debt for purposes of an unlawful detainer if the tenant pays at least 25% of the amount due by January 31, 2021. (§ 1179.03(g)(2).)

(09/02/20)

**11. How should the court handle a late declaration of financial distress, filed after an action for unlawful detainer has been filed?**

If a tenant did not return a declaration of fiscal distress to a landlord in a timely manner, and is subject to an unlawful detainer action, the defendant tenant has the right to file a signed declaration with the court within the time provided for responding to an unlawful detainer complaint. (§ 1179.03(h).)\* (09/02/20)

Upon receiving such a filing:

- The court must hold a noticed hearing—separate from the trial— giving the parties between 5- and 10-days’ notice, to determine if the failure to return the declaration in a timely manner was the result of mistake, inadvertence, surprise, or excusable neglect.
- If such a finding is made, the court is to dismiss without prejudice any cause of action (the entire case if appropriate) based on the notice demanding payment of COVID-19 rent:
  - if before February 1, 2021, dismissal without further conditions.
  - if after February 1, 2021, and for rent due during the transitional period, dismissal conditioned on the tenant, within 5 days of the order, making the minimum payments required by statute. (Note, the statute at section 1179.03(h)(2)(C) refers to making the payment required under subdivision (g)(1)(B), but there is no such

subdivision. Subdivision (g)(2)(B) is the section requiring payment of the 25% minimum.)

(09/02/20)

**12. Is there a remedy for unpaid COVID-19 rental debt in the event an unlawful detainer judgment is not issued?**

The new AB 3088 notices inform tenants that they still owe the full amount of rent due and can be sued for the money even though they may avoid eviction. AB 3088 provides the option of litigating disputes for payment of COVID-19 rental debt in small claims court, even when the amount claimed is over the jurisdictional limits that otherwise pertain to that court. The option to go to small claims court with these cases may not be exercised until March 1, 2021 and will remain in effect until February 1, 2025.

Recovery of rent due by civil action may be impacted by local ordinances. (See FAQ no. 14 on impact of local ordinances.) (09/02/20)

**12. What are the new masking provisions?**

AB 3088 extends the masking provisions generally applicable to unlawful detainer files in two respects, and only until February 1, 2021:

- For unlawful detainer actions filed between March 4, 2020 and January 31, 2021 based on a failure to pay rent: files are exempted from the unmasking permitted upon a judgment for plaintiff under § 1161.2(E) and (F) and must continue to be masked while the new law is in effect. (§ 1161.2(g)(2).)
- For civil actions to recover COVID-19 rental debt: files in actions seeking recovery of COVID-19 rental debt must be masked, with access permitted only as is permitted under section 1161.2. (§ 1161.2.5.) To provide notice to the court that access is to be limited, the complaint and responsive pleading in such actions must include, either on the first page or on a cover sheet, the notation "ACTION FOR RECOVERY OF COVID-19 RENTAL DEBT." (Note, because section 1161.2.5 is repealed as of February 1, 2021, and because the option to bring such actions in small claims court does not begin until March 1, 2021, this masking should not be required in small claims actions.)

The duration of the more expansive masking under AB 3088 only applies until February 1, 2021, because the amendment of section 1161.2 and new section 1161.2.5 are repealed as of that date. (09/02/20)



**14. What is the impact of AB 3088 on local ordinances?**

Many local governments currently have ordinances or administrative actions in place to protect tenants from eviction during the pandemic. AB 3088 addresses such provisions generally and also specifically addresses provisions regarding periods in which to repay COVID-19 rental debt. (§ 1179.05.)

- Generally: current local eviction protection measures are not exempted, but they cannot be extended, expanded, renewed, or newly adopted between August 19, 2020 and January 31, 2021. In other words, if an ordinance in effect on August 19 provided an eviction moratorium until September 30, it cannot now be extended beyond that date.
- As to provisions that provide a period for repayment of COVID-19 rental debt:
  - The repayment period must begin before or on March 1, 2021:
    - if repayment period starts earlier than March 1, date cannot be extended now;
    - if repayment period starts March 1 or later, or if based on end of state of emergency, it is deemed to begin March 1.
  - Period for repayment in current ordinance:
    - cannot be extended; *and*
    - cannot last beyond March 1, 2022.
- Local governments can still enact just-cause eviction ordinances that are more protective than the state law just-cause eviction statute, but cannot enact any that relate to rent due from March 1, 2020 to January 31, 2021.

(09/02/20)

**15. Does AB 3088 address when a trial date should be set?**

No.

**Contacts**

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