

Shelter from the Storm: California Extends Pandemic Eviction Protections and Rental Assistance Program

On January 29, 2021 Governor Newsom signed into law Senate Bill 91 (SB 91), extending residential eviction protections and implementing the State's rental assistance program to address the impacts of the COVID-19 pandemic in rental housing.

Eviction Protections

The eviction protections in SB 91 extend and expand the protections put in place by AB 3088, which expired on January 31, 2021. The new legislation extends the period in which qualifying tenants are protected against eviction for nonpayment of rent. The statutory "Covered Time Period" will now end on June 30, 2021. During the Covered Time Period, tenants who cannot afford rent due to COVID-related financial distress cannot be evicted for nonpayment as long as the tenant pays at least 25% of the rent owed between September 1, 2020 and June 30, 2021 by June 30, 2021. Tenants eligible for eviction protection must provide their landlord with a declaration signed under penalty of perjury stating that the tenant is unable to pay the rent because of loss of income or increased expenses related to the COVID-19 pandemic.

Tenants who pay 25% of the rent for the Covered Time Period still owe the remaining 75% of the rent, but the unpaid rent can only be collected as a consumer debt, requiring the landlord to file a civil action. Small claims court limits have been increased for this purpose.

Landlords are required to provide any tenant who has missed any rent payment after September 1, 2020 with a notice on or

before February 28, 2021 in a form prescribed by the statute informing the tenant of the available tenant protections. The SB 91 updated notice must include information about potential rental assistance that may be available to the tenant. The Department of Real Estate is required to make available translations of the required notice in various languages no later than February 15, 2021.

SB 91 also expands the tenant protections previously provided by AB 3088. Landlords and third-party screening companies are prohibited from:

- using unpaid rent during the Covered Time Period—defined as COVID-19 Rental Debt—as a negative factor for tenant screening;
- selling COVID-19 Rental Debt to collection agencies;
- charging late fees for COVID-19 Rental Debt;
- applying any portion of a tenant's security deposit to COVID-19 Rental Debt without the tenant's written consent;
- applying any monthly rental payment to any COVID-19 Rental Debt other than the prospective month's rent without the tenant's written consent.

SB 91 further expands protections by:

- requiring landlords seeking to recover COVID-19 Rental Debt in court to attach documentation showing that the landlord made a good faith attempt to obtain governmental rental assistance and allowing courts to reduce awards based on a finding that the landlord

refused to participate in the state rental assistance program;

- limiting the attorneys' fees that can be awarded in most actions to recover COVID-19 Rental Debt to no more than \$500 in an uncontested case and no more than \$1,000 in a contested case;
- mandating that any rent forgiven by a landlord or any rental assistance received by a tenant is not included in a tenant's gross income for state income tax purposes.

SB 91 also protects landlords from tenant requests for rent reductions if the landlord decreases the housing services in compliance with federal, state, or local public health orders or guidelines.

Pre-emption of Local Ordinance

SB 91 extends the provisions of AB 3088 that suspend any local ordinance or regulation protecting tenants from evictions related to COVID-19 adopted after August 19, 2020 until July 1, 2021. Additionally, SB 91 reforms rent repayment provisions in any local regulations that were in effect prior to August 19, 2020 to leave in effect any repayment period that commenced before August 1, 2021, and to require that any repayment period commencing after August 1, 2021 must commence on August 1, 2021. Apparently as a result of a drafting error, the legislation also states that a local ordinance or regulation in effect as of August 19, 2020 may not permit a tenant rent repayment period that extends beyond August 31, 2021, which would leave many tenants with only a one-month period to repay COVID-19 Rental Debt under local ordinances and regulations. Clean up legislation is expected to correct that date to extend the repayment period to August 31, 2022.

Rental Assistance Program

SB 91 establishes the State's program for providing rental assistance from funds allocated to the State pursuant to the federal Emergency Rental Assistance Program ("ERAP"). The

State program will give first priority to eligible households with incomes less than 50% of area median income and second priority to households in communities disproportionately impacted by COVID-19, as determined by HCD; third priority will be given to Eligible Households with incomes less than 80% of area median income. ERAP defines Eligible Households as renter households that (i) qualify for unemployment or have experienced a reduction in household income, incurred significant costs or experienced financial hardship due to COVID-19, (ii) demonstrate a risk of experiencing homelessness or housing instability, and (iii) have a household income at or below 80% of area median income.

Rental Assistance limited to 80% of the rental debt from April 1, 2020 through March 31, 2021 may be provided directly to the landlord on behalf of an Eligible Household. Landlords receiving a direct payment of rental assistance must enter into an agreement accepting the assistance as full payment of the rental debt owed and releasing all claims for the remainder of the rent debt.

If the landlord refuses to participate in the rental assistance program, assistance may be provided directly to the tenant, but the amount paid to the tenant is limited to 25% of the rental debt owed between April 1, 2020 and March 31, 2021. Funds may also be used to pay prospective rent payments for an Eligible Household, limited to 25% of the household's monthly rent.

The California Department of Housing and Community Development ("HCD") will distribute the State allocation of ERAP funds to localities in accordance with the State reservation tables that are based on population. Cities and counties with a population of 500,000 or more are eligible for a block grant allocation. Cities and counties with a population greater than 200,000 but less than 500,000 may request a block grant from the State, but must demonstrate an established program consistent with the requirements of SB 91

and the capability to implement the program. Cities and counties receiving a block grant can either administer the State-allocated funds themselves or request that the State administer the funds along with the localities' direct allocation of ERAP funds. Cities and counties with a direct allocation of ERAP funds that are not willing to administer their rental assistance program in accordance with the State statute and guidelines are not eligible for a block grant.

Counties and cities with a population of 200,000 or more must provide HCD with an expression of intent form indicating if the locality will participate in the State program and whether the locality will self-administer its funds no later than February 12, 2021. The State, HCD and the State program implementer are statutorily indemnified from liability in the administration of the assistance under SB 91, but the legislation does not contain any similar indemnification of cities and counties that may elect to have HCD administer their federal or state allocations.

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