



September 2020

## **CA Eviction and Foreclosure Moratorium Imposed on Owners and Lenders of Residential Properties**

California Assembly Bill 3088, also known as the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (Tenant Homeowner and Landlord Act), was passed by the California Legislature and signed by Gov. Gavin Newsom on Aug. 31, 2020. The Act took effect immediately upon the governor's signature as an urgency statute. Importantly, the Tenant Homeowner and Landlord Act applies only to residential, not commercial units (although other local rules may affect commercial real estate). AB 3088 enacts the COVID-19 Tenant Relief Act of 2020 (Tenant Act) and the COVID-19 Small Landlord and Homeowner Relief Act of 2020 (Homeowner Act), which are summarized below.

### **The Tenant Act**

- Applies to landlords who are owners of residential real property, residential rental units, mobile home parks, and spaces or lots in mobile home parks.
- Requires 15-days' notice to tenants if landlord is seeking rent or other charges due between March 1, 2020, and Jan. 31, 2021. Requires that the notice include an unsigned copy of a declaration of COVID-19-related financial distress and an advisement that the tenant will not be evicted for failure to comply with the notice if the tenant signs the declaration and delivers it to the landlord. If the tenant returns a declaration of COVID-19-related financial distress, the landlord must comply with the following:

- For the March-August 2020 payments, the landlord cannot evict.
- For the September 2020-January 2021 payments, the landlord must allow the tenant until Jan. 31 to make a 25% payment and can only evict if the renter fails to make that payment.
- Requires landlords to send three notices: (1) notice about the new law; (2) notice regarding past-due rent from March to August 2020; and (3) notice for past-due rent from September 2020 to January 2021 (sent monthly for each month in which rent is not received timely).
- Prohibits a court from finding a tenant liable for unlawful detainer before Feb. 1, 2021, subject to certain exceptions, including if the tenant was liable for unlawful detainer before March 1, 2020.
- Prohibits a court from issuing a summons on a complaint for unlawful detainer before Oct. 5, 2020.
- Authorizes a landlord to require a high-income tenant to submit additional documentation supporting the claim that the tenant has suffered COVID-19-related financial distress. “High-income tenant” means a tenant with an annual household income of 130% of the median income, as published by the Department of Housing and Community Development in the Official State Income Limits for 2020, for the county in which the residential rental property is located.
- Preempts any ordinance, resolution, regulation, or administrative action such as an eviction moratorium adopted by a city or county in response to COVID-19, but allows any local ordinance adopted after Sept. 1, 2020, and is “more protective” in preventing termination of a tenancy without just cause to apply.
- Makes a violator of these provisions liable for damages in an amount between \$1,000 and \$2,500 until Feb. 1, 2021.
- Gives jurisdiction to small claims courts in any action for recovery of COVID-19 rental debt, regardless of amount demanded, until Feb. 1, 2025.

### **The Homeowner Act**

- Generally applies to natural persons who are mortgagors, trustors, or successors in interest, and entities if the secured property contains no more than four dwelling units and is occupied by at least one residential tenant.
- Requires a mortgage servicer to provide a specified written notice to a borrower, if the mortgage servicer denies forbearance during the effective time period, that states the reasons for that denial, if the borrower meets the following two criteria: (1) the borrower was current on payments as of Feb. 1, 2020, and (2) the borrower is experiencing a COVID-19-related financial hardship that prevents the borrower from making timely payments on the mortgage obligation due.
- Requires a mortgage servicer to comply with applicable federal guidance regarding borrower options following a COVID-19-related forbearance.

### **Protections Before Exercise of Power of Sale**

- Existing law applies various protections before the exercise of a power of sale to a first lien mortgage or deed of trust that is secured by owner-occupied residential real property containing no more than four dwelling units. The Tenant Homeowner and Landlord Act expands these protections to a first lien mortgage or deed of trust that is secured by residential real property containing no more than four dwelling units that is occupied by a tenant as well, if certain criteria are met. One of the criteria is a tenant occupying the property who is unable to pay rent due to a reduction in income related to COVID-19.

## Why This Matters

At first glance, it may appear that this legislation has no effect on larger entities, particularly those in the commercial real estate business. But the bills may affect businesses in other, less obvious ways:

- Multi-family. Owners and investors in multi-family projects will need to be aware of these laws in their asset management and budgeting process.
- Portfolio of SFR. Some investors have been buying up portfolios of single-family residences and leasing them out. The new rules could potentially affect the entire portfolio.
- Lenders and mortgage servicing companies. The limitations on foreclosure are significant, and lenders easily could run afoul of the foreclosure rules. Borrowers and lenders in the SFR and multi-family space will have to factor in the effect on cash flow and loan compliance.
- Extension and expansion. Rental and eviction moratoria have been extended in certain instances, and some have been expanded by state and local authorities to include retailers and other commercial real estate. Real estate business stakeholders need to watch in particular for local rules and regulations that are issued but that may not get the same news coverage.

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