

April 2020

Eviction Moratoriums

In response to COVID-19 pandemic both State and Local Governments have been implementing moratoriums concerning evictions. Unfortunately, while similarity exists, there is no uniformity concerning the varying rules and procedures owners of residential properties must follow. On April 21, 2020, several Bay Area Counties and Cities had proposed landlord / tenant ordinances and amendments including sweeping amendments to Oakland's Tenant Protection Ordinance ("TPO"), a freeze on rent increases in San Francisco for those units covered by the San Francisco Rent Ordinance, county-wide moratorium on evictions in Contra Costa County, and an attempt to enact a moratorium on all rent and mortgage payments during the emergency proclamation in Richmond.

While the Oakland TPO Amendments were tabled for further review on May 12, 2020, and the most significant aspects of the Richmond Ordinance did not pass, the San Francisco rent freeze and Contra Costa County moratorium passed. This alert, however, concerns the sweeping aspects of the Moratorium on Residential Evictions passed by the Alameda County Board of Supervisors on April 21, 2020. A copy of the Ordinance can be found [here](#). A prior alert concerning the State and various City moratoriums can be found [here](#).

Key Aspects of Alameda County Moratorium on Evictions Including Applicability, Penalties and Enforcement

The Ordinance provides two distinct eviction moratoriums. The first applies to all residential evictions regardless of cause excepting only Ellis Act, Governmental Order Requiring Vacancy of Unit, and Imminent Threat to Health or Safety that is not based on Resident Covid19 illness or exposure. The second applies to all evictions based on non-payment of rent or mortgage caused by Covid-19. Both moratoriums apply to all Cities in Alameda County as well as all unincorporated areas. If a City has a moratorium ordinance in effect that substantially protects Tenants from eviction during the Covid19 emergency period, a City may opt out of the County Ordinance but must do so in writing, under certain terms, and specifically identify which sections from which it is opting out. If the City Ordinance does not include the minimum protections identified in the County Ordinance, the County Ordinance will apply despite contrary provisions or silence on that issue.

General Eviction Moratorium

- Applies to all residential evictions including those in mobile home parks from April 21, 2020 to 30 days after Local Health Emergency is no longer in effect.
- Provides absolute affirmative defense to unlawful detainers in which notices of termination and complaints were served, filed, or expired on or after March 24, 2020 and on or before the 30th day after the Local Health Emergency is no longer in effect.
- Prohibits imposition of late fees, fines, or interest for rent that becomes due during moratorium. This section does not require that non-payment be Covid-19 related.

Covid-19 Nonpayment Eviction Moratorium

- Applies to all residential evictions including those in mobile home parks from April 21, 2020 to May 31, 2020, unless extended, where nonpayment due to substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary child care expenses caused by Covid-19.
- Provides absolute affirmative defense to unlawful detainer in which notices of termination or complaints were served, filed, or expired on or after April 21, 2020 and on or before May 31, 2020.
- Prohibits imposition of late fees for Covid-19 related late payment.
- Documentation showing reduction in pay due to Covid-19 required but need not be provided to landlord or lender in advance to receive protection of Ordinance. Landlord or lender may request documentation but it is not required to be produced until either 45 days after request or 30 days after the County Shelter In Place Order is lifted, whichever is later.
- Payment of Back Rent not relieved. However, affected tenant has 12 months to repay and landlord may not use eviction process to enforce payment of back rent that became due and was not paid due to Covid-19.

Key Sections Applicable to Both Moratoriums in Ordinance

- Protections are non-waivable.
- Violations and Remedies
 - Knowledge, intent, or other mental state in not necessary to establish a violation.
 - Each person is liable for a separate offense for each and every day during which a violation continues.
 - Violations constitute an affirmative defense to unlawful detainer, misdemeanor offense, and subjects person to civil fines and remedies.
 - Civil fines and remedies include \$1,000.00 per day for each violation while such violation continues, injunctive relief, damages, costs, and reasonable attorney fees.
 - The Ordinance provides a carve-out indicating that nothing in the Ordinance shall be deemed to interfere with right of landlord or lender to bring action against Resident or Non-Resident 3rd party for damage to the residential premises. However, this section is silent on whether not interfering with right of landlord means that landlord may evict based upon such damage caused by a Resident.
- There are notice requirements for any termination notices served during the emergency period including specific language mandated by the County Ordinance and requirement to provide copy of the applicable County or City Ordinance.

We continue to monitor Ordinances and changes to landlord-tenant relationship state-wide. If you have questions or seek consultation regarding eviction moratoriums or other landlord-tenant, you may contact us.

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