

# Kimball, Tirey & St. John LLP

## Legal Alert

### Governor Newsom Passes Second Executive Order Providing Additional Eviction Protections

**March 31, 2020**

On March 27, 2020, Governor Newsom passed a second Executive Order ([N-37-20](#)) implementing additional eviction protections for tenants who are unable to pay their rent as a result of the COVID-19 pandemic. This second order states that if an unlawful detainer action is filed against a tenant for nonpayment of rent, and the tenant notified the landlord within at least seven (7) days after the rent became due that the tenant was unable to pay the rent for reasons related to COVID-19, the tenant will have 65 days to respond to the unlawful detainer complaint (instead of the usual 5 days) and no writ to enforce the sheriff lockout will be enforced. The order requires the tenant to “retain” verification of a COVID-19 related financial hardship which “*may be provided to the landlord no later than the time upon payment of back due rent.*”

The Governor’s order states that these protections shall be in place through May 31, 2020.

Newsom’s order (N-37-20) further states that it “*supersedes Executive Order [N-28-20](#) to the extent that there is any conflict with that order.*” Executive Order N-28-20 was the Governor’s first order, dated March 16, 2020, which allowed local governments to implement eviction moratoria if a tenant was unable to pay the rent due to the COVID-19 pandemic. As a result of that original Executive Order (N-28-20), many local governments have passed moratoria prohibiting landlords from serving nonpayment of rent notices and/or filing evictions for nonpayment of rent if COVID-19 related.

These local moratoria are intended to prevent landlords from serving a nonpayment of rent notice or filing an eviction against a tenant when a COVID-19 financial hardship exists. The Governor’s newest order (N-37-20) provides certain protections (65 days to file a response to the eviction and no writ enforced before May 31, 2020) to tenants *after* an eviction has been filed if the tenant meets the criteria listed in the order as described above.

So how does the Governor’s most recent Executive Order (N-37-20) affect these local moratoria? Are they still in effect? Yes, landlords must still comply with the local orders.

#### **Q. Do I have to offer a tenant an option to defer rent statewide?**

- In order for a resident to qualify for a rent deferral in accordance with the Governor’s original March 16, 2020 order (N-28-20), a local moratorium must have been passed which provides such protections to the tenant.
- If no local eviction moratorium has been passed, the landlord is not required to offer a rent deferral to the tenant and is able to file an unlawful detainer after expiration of the pay or quit notice (subject to court closure or delays).
- Once the unlawful detainer has been filed, the Governor’s order (N-37-20) applies. Pursuant to this order, if the tenant notified the landlord within seven (7) days after rent became due that the financial hardship was COVID-19 related, the tenant will have 65

days to respond to the unlawful detainer and no lockout can take place prior to May 31, 2020.

**Q. What if a local ordinance has been passed? Does the Governor's N-37-20 order supersede the local ordinance?**

- No. N-37-20 states, "This order supersedes Executive Order N-28-20 to the extent that there is any conflict with that order." (N-28-20 allows local governments to pass eviction moratoria.) As we interpret the Governor's latest order N-37-20, there is no conflict with local eviction moratoria (which enact notice and eviction protections for tenants who meet certain criteria) and N-37-20 (which applies after an eviction is filed).
- In order to qualify for rent deferment/protections under an eviction moratorium, a tenant must comply with the requirements outlined in the local order. Assuming the resident complies with those requirements, the tenant would be eligible to defer rent payments and the landlord would be prohibited from serving a nonpayment of rent notice and/or filing an unlawful detainer for a certain period of time. Under this scenario, the Governor's order N-37-20 is irrelevant as no unlawful detainer has been filed.
- If a tenant did not comply with the requirements of a local order, the tenant would not be eligible for a rent deferral/eviction protections and the landlord could serve a Notice to Pay Rent or Quit, then file an unlawful detainer for nonpayment of rent. However, at that point, the Governor's order N-37-20 would apply. Assuming the tenant met the criteria included in order N-37-20, the tenant would have 65 days to file a response to the unlawful detainer and no lockout would take place prior to May 31, 2020.

In other words, the Governor's order N-37-20 acts as a safety net for tenants with a financial hardship related to COVID-19 in the following two situations:

- 1) In cases where a local eviction moratorium was not passed in the jurisdiction where a tenant resides and the landlord files an unlawful detainer as a result (and the tenant meets the criteria in N-37-20);
- 2) In cases where a local eviction moratorium was passed but the tenant did not meet the specific criteria outlined in that local moratorium (but the tenant meets the criteria in N-37-20).

Both the Governor's orders and local eviction moratoria continue to make it clear that although a tenant may be entitled to defer rent payments when a COVID-19 financial hardship exists, the rent is still due and payable after a designated period of time.

Some local laws prohibit filing an eviction for nonpayment of *deferred* rent but reserve the landlord's right to use legal remedies other than eviction to collect unpaid deferred rent.

Landlords must look to local jurisdictions where their properties are located to see if there are any additional requirements or amendments to earlier moratoria previously enacted as laws are being created, passed, and amended almost daily.

Also, courts may interpret the ordinances and orders and how they work together in ways we cannot foresee. Due to the swift implementation of many new laws, and the different layers of state and local laws, there are many ambiguities. These raise questions that will be determined differently by various courts.

*Our attorneys are ready to assist you. For any questions regarding this alert, please contact us at [info@kts-law.com](mailto:info@kts-law.com).*

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