

Kimball, Tirey & St. John LLP

Legal Alert

Governor Signs the COVID-19 Tenant Relief Act (AB 3088) Into Law

September 4, 2020

On August 31, 2020, the Governor signed the COVID-19 Tenant Relief Act (AB 3088) into law. AB 3088 was originally introduced as a bill designed to make minor changes and corrections to AB 1482 (including important changes regarding how to calculate CPI). However, in addition to these changes related to AB 1482, the law also protects residential tenants with a financial hardship related to COVID-19 from being evicted until 2021 under certain circumstances.

This legal alert is intended as a general overview of AB 3088. There are several other laws and ordinances, including the CARES Act and the recently enacted CDC Eviction Moratorium (discussed in more detail below) that may alter your legal rights and obligations. Moreover, there are substantial penalties associated with violating some of these other laws, moratoria and orders. Therefore, before serving any notices, you should consult with legal counsel.

AB 3088 limits a landlord's ability to evict a tenant for non-payment of rent due from March 1, 2020 to January 31, 2021, if the tenant has experienced a financial hardship related to COVID-19. There is a difference between how a landlord would treat rent that accrued from March 1, 2020 to August 31, 2020, (the "*protected time period*") and rent that accrues from September 1, 2020 to January 31, 2021 (the "*transition time period*"). Even the statutory notice that needs to be served for each time period is different. Only a resident who returns a signed declaration after a pay or quit notice is served is protected. A landlord is able to evict residents who fail to return a signed declaration (and additional verification for "high-income" tenants as described below) as of October 5, 2020. The court will begin issuing summons, entering default judgment or otherwise proceeding with cases based on just cause – other than nonpayment of rent or charges and unnecessary demolition or substantial renovation – as of September 2, 2020.

When Cases Can be Filed:

In order to allow time for courts to prepare for the implementation of the new law, under AB 3088, the court will not issue summons or enter default judgment for cases based on nonpayment of rent or any other financial obligations due under the lease until October 5, 2020.

The court will begin issuing summons, entering default judgment or otherwise proceeding with cases based on "just cause" (explained in more detail below) as of September 2, 2020.

I. Protected Time Period - Rent Due From March 1, 2020 to August 31, 2020:

The landlord must serve upon any resident who owes rent during the protected time period a 15-Day Notice (15 court days) to Pay or Quit – unless service of any pay or quit notice is restricted by local ordinance. The notice must include specific statutory language and a declaration form to be completed and signed by tenant under penalty of perjury which states the tenant has experienced a COVID-19 financial hardship. The 15-day notice must also "*set forth the amount of rent demanded and the date each amount became due.*" The declaration must be provided in the same language that the lease was negotiated in. The tenant has 15 court days to return the notice. All notices and disclosures must be in at least 12-point font.

A. Collection of Rent in Small Claims Court:

If the tenant returns the declaration within 15 days, the landlord is unable to file an eviction against the tenant. Instead, the rent becomes classified as “consumer debt” and the landlord can file a small claims action against the tenant as of March 1, 2021. Statutes related to small claims have been amended until February 1, 2025, so that landlords can file an unlimited number of cases for COVID-19 rental debt with no cap on the amount demanded.

B. Verification of COVID-19 Financial Hardship for High-Income Tenants:

For any tenant who qualifies as a high-income household (income over \$100K and over 130% of the median income for where the property is located), a landlord can require a signed declaration *and* additional verification of financial hardship related to COVID-19 if the proper statutory language was included in the 15-day notice. However, the landlord must already have the income information for the household from when the tenant applied and is prohibited from asking for additional information regarding income level at this time. In other words, if a landlord already has proof that the tenant household is high-income (such as the tenant’s signed statement on the rental application regarding the tenant’s income), then the landlord can request verification of COVID-19 related financial hardship. A written statement from the tenant’s employer, pay stubs or an unemployment insurance record to demonstrate a COVID-19 financial hardship are included on the list of acceptable verification for high-income tenants under AB 3088.

Landlords should be cautioned that violation of this provision of the bill can result in a judgment in favor of the tenant if an eviction has been filed, including attorney’s fees and costs awarded to the tenant, even if the tenant voluntarily provided you with additional information about the household income.

II. Transition Time Period - Rent Due from September 1, 2020 to January 31, 2021:

Similar to the procedure described above for rent that accrued from March 1, 2020 to August 31, 2020, for rent that accrues from September 1, 2020 to January 31, 2021, the landlord must serve a 15-Day Notice (15 court days) to Pay or Quit. The notice must include specific statutory language and a declaration form to be completed and signed by tenant under penalty of perjury which states the tenant has experienced a financial hardship related to COVID-19. The 15-day notice must also “*set forth the amount of rent demanded and the date each amount became due.*” The declaration must be provided in the same language that the lease was negotiated in. The tenant has 15 court days to return the notice.

A. Tenant Must Pay 25% of the Rent:

For rent that becomes due during the transition time period, residents are protected from eviction under AB 3088 as long as they (1) return the required declaration regarding a COVID-19 financial hardship *and* (2) pay at least 25% of the rent for each month. The 25% does not need to be paid in each month when the rent becomes due. The tenant can pay the full amount on January 31, 2021, in one lump sum in order to avoid being evicted as of February 1, 2021.

With regard to the 25% payment requirement, if a local ordinance is still in effect during the transition time period and does not require payment of rent until the expiration of the ordinance, the tenant does not have to pay 25% of the rent protected under the ordinance.

As stated above, the landlord can require high-income tenant households to return a signed declaration along with verification of financial hardship due to COVID-19.

B. No Eviction to Recover Remaining 75% of the Rent:

If the tenant provides the signed declaration and pays at least 25% of the unpaid rent from the transition period by January 31, 2021, the landlord will not be able to file an eviction against the

tenant to collect the remaining balance. Instead the remaining 75% of the rent which has accrued during the transition time period would become consumer debt, and the landlord can file a small claims action against the tenant as of March 1, 2021.

Failure to Return Signed Declaration:

Landlords can serve a pay or quit notice each month the rent has not been paid (subject to local ordinance) and require a new signed declaration from the tenant. Tenants have 15 court days to return declarations once the 15-day notice is served. However, there is language in AB 3088 that allows a tenant who has not returned the declaration to the landlord during the 15-day notice period to file the declaration with the court once the tenant has been served with the unlawful detainer. At that point a hearing must be scheduled within 10 days prior to any trial in order for the judge to determine if the tenant's failure to return the declaration to the landlord was the result of "*mistake, inadvertence, surprise or excusable neglect.*" If the judge so finds, the case would be dismissed at that time and the tenant would receive the same protection as if the declaration had been submitted to the landlord in a timely manner.

If the unlawful detainer was filed for rent due from September 1, 2020 through January 31, 2021, and the tenant files the declaration with the court, the tenant would also be required to pay the 25% of the rent that is due within 5 days before the case would be dismissed by the judge.

If the tenant returns a declaration but fails to pay at least 25% of the rent for each month the rent is delinquent, then the landlord can file an eviction for rent that accrued from September 1, 2020 to January 31, 2021, as of February 1, 2021.

Financial Obligations Other Than Rent:

AB 3088 provides the same protection as described above for all financial obligations due under the lease, including pet rent, garage rent, utilities, etc. Therefore, if you demand those additional fees in a cure or quit notice, the notice must be a 15-day notice (15 court days) and explain the individual charges and when they became due. All of the same statutory language in the 15-Day Pay or Quit Notices must be included in the cure or quit notices.

Multiple Notices Required:

Keep in mind that because of the different categories described above (rent that accrues during the protected time period vs the transition time period and disclosures required for regular tenants vs high-income earners), you are potentially going to need at least four (4) different pay or quit notices. If your property is subject to CARES, you may need at least eight (8) different notices. If you plan to serve cure or quit notices demanding financial obligations under the lease, you will need an additional four (4) notices.

Moreover, landlords will need to remember that rent due for the month of August (which falls within the protected time period) cannot be demanded in the same pay or quit notice demanding rent for September (which is part of the transition time period) because different disclosures are required for each.

Mandatory Disclosure of Rights Under AB 3088:

Landlords must also provide a separate mandatory disclosure of a tenant's rights under AB 3088. This mandatory disclosure must be provided at least once to each tenant who has unpaid rental debt from March 1, 2020 to August 31, 2020. The disclosure must be provided on or before **September 30, 2020**. It can be provided with a notice to pay or quit if served upon the tenant before September 30, 2020. If your tenant defaults on the rent after October 1, 2020, however, you must provide the disclosure prior to serving a pay or quit notice for rent.

Local Ordinances:

AB 3088 does not completely supersede local ordinances. If a local ordinance was in effect as of August 19, 2020, the terms of the ordinance in place on that date will remain in effect, including the expiration of the ordinance as of that date. Any amendments or extensions made after August 19, 2020, would not take effect until February 1, 2021. However, a repayment period (if any) included in a local ordinance must allow for rent repayment to commence no later than March 1, 2021, and cannot allow the repayment period to stretch beyond March 31, 2022.

Just Cause Protections:

Prior to February 1, 2021, an eviction can only be filed for “just cause” as described in AB 1482, with some additional restrictions in cases related to demolition and substantial renovation, or when the owner enters into a contract for sale of the property and the new owners will occupy the property. Therefore, landlords are unable to proceed with an eviction based on a Notice of Non-renewal or a 30/60-Day Notice without cause. This provision applies to all tenancies immediately, including tenancies less than one year, affordable housing, new construction, and single-family homes.

Penalties for Violating AB 3088:

Landlords who engage in acts of “self-help” such as locking a tenant out or turning off the utilities, or who retaliate against a tenant for invoking the protections afforded under AB 3088 are subject to increased fines and penalties. Landlords should take caution before attempting to evict a tenant based on a lease violation if the resident also owes rent from March 1, 2020 through January 31, 2021, especially if the lease violations were not previously enforced.

Retroactive Language:

AB 3088 is retroactive and applies to any case where a notice is served for rent due for any period from March 1, 2020 through January 31, 2021. AB 3088 expires on February 1, 2025. However, many of the provisions expire sooner as outlined above. Nothing in the bill applies to rent that becomes due after January 31, 2021.

CDC Eviction Moratorium:

Just on the heels of the governor signing AB 3088 into law, The CDC announced a nationwide eviction moratorium that will take effect as of September 4, 2020. It is unclear how this will impact AB 3088. There is language in the CDC moratorium which states that it will not apply in states or local jurisdictions that have already enacted “equal or greater” eviction protections.

It is unclear whether AB 3088 provides greater protections in *all* aspects. Governor Newsom has publicly taken the position that the CDC eviction moratorium does not apply in California because the state and local restrictions already in place are more far reaching. Although having a statement to that effect from the governor provides landlords with some level of assurance, it remains to be seen if judges will take the same position in all cases. Landlords should be aware that there are significant fines associated with violation of the CDC moratorium (between \$100,000 and \$500,000).

Please let us know how KTS can assist you during these challenging times. Our attorneys are available to assist you with any questions about these issues. KTS will be offering training and compliance documents for purchase to assist clients in complying with AB 3088. Feel free to contact us info@kts-law.com.

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