

Kimball, Tirey & St. John LLP

Legal Alert

What is the State of the Residential Industry Now that CTRA, The Housing Recovery Act and AB 2179 Have Expired?

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As has been the case throughout the COVID-19 pandemic, owners and property managers are asking salient questions as to what happens next with respect to collection of rent, what type of notice is required, what is going on with the courts and essentially how are they to manage the properties within the bounds of California law.

What Protections are Still in Place Post CTRA?

Aside from the protections provided for non-payment of COVID-19 rental debt, [Senate Bill 91](#), [AB 81](#), and [AB 832](#) also provided additional protections and requirements that remain in place protecting tenants. These protections and their expiration, if any are listed below.

Tenant Screening Protections - Under amendment to [Civil Code Section 1785.20.4](#) a housing provider, tenant screening company, or other entity that evaluates tenants on behalf of a housing provider shall not use an alleged COVID-19 rental debt, as defined in Section 1179.02 of the Code of Civil Procedure, as a negative factor for the purpose of evaluating a prospective housing application or as the basis for refusing to rent a dwelling unit to an otherwise qualified prospective tenant.

Late Fees and Increased Fees - SB 91 and [AB 81](#) amended [Civil Code Section 1942.9](#) to state that landlords are prohibited from charging or collecting a fee for the late payment of COVID-19 rental debt. Landlords are further prohibited from increasing a fee or adding a fee charged to a tenant for services that were previously provided without charge. These protections apply to tenants who have COVID-19 rental debt and provided the landlord a declaration of COVID-19 related distress. There may also be local restrictions regarding late fees, so please check with your local KTS office regarding late fee questions.

Security Deposits and Rent Allocation - [AB 81](#) Amended [CCP Section 1179.04.5](#) stating that for the duration of a tenancy that existed during the covered time period, the landlord shall not: a) apply a security deposit to satisfy COVID-19 rental debt, unless the tenant agreed to its application in writing or b) apply a monthly rental payment to an COVID-19 rental debt other than to the prospective month's rent unless the tenant agrees to its application otherwise in writing. If a tenant vacates the property, then the security deposit may be allocated per CC §1950.5. These provisions will be repealed as of October 1, 2025.

Sale and Assignment of COVID Rental Debt - [Civil Code 1788.66](#) was amended by [AB 832](#) to state that a person shall not sell or assign COVID-19 rental debt for the time between March 1, 2020 and September 30, 2021 to any person who would have qualified for rental assistance funding, if the person's household income is at or below 80 percent of the area median income for the 2020 or the 2021 calendar year.

Small Claims Jurisdictional Limits - [AB 832](#) finalized the amendments to the Small Claims Courts under [CCP 116.223](#) provided that landlords are filing under COVID-19 rental debt (financial obligations that became due under a lease between March 1, 2020 and September 30, 2021),

there is no jurisdictional limit as to request for these damages. Further the claims for COVID-19 rental debt are also not subject to the limitations on filing more than 2 cases within a given year. These amendments to the small claims court will be in place until October 1, 2025.

What Kind of Notice Do I Serve After July 1, 2022?

Transition Notices - The laws with respect to a demand of COVID-19 rental debt are still governed by [CCP 1179.03](#), which still requires the service of the appropriate mandatory disclosure notice as well as at least a fifteen day notice excluding Saturdays, Sundays, and other judicial holidays, shall set forth the amount of rent due and the date each amount became due, and state the tenant will not be evicted except as provided by the code, if they provide the signed declaration of COVID-19 related financial distress to the landlord on or before the Notice to Pay or Quit or Perform or Quit expires. Therefore, the transition notice will still meet these requirements in order to proceed with the eviction. Transition rent will include both Pay or Quit Notices as well as Perform Covenant or Quit Notices for financial obligations.

Notices Demanding October 2021 Rent or After - These notices do not require specific language for conventional properties so long as they are not “covered dwellings” under the CARES Act. Landlords are therefore able to serve a standard 3-Day Notice to Pay the Rent or Quit, or Perform Covenant or Quit for other financial obligations, for these cases.

CARES Act - Section 4024 states that a lessor may not require a tenant to vacate the “covered dwelling” before a date that is 30 days after which the lessor provides the tenant with a notice to vacate. Therefore, for a property or tenancy covered under the CARES Act, tenants should be provided at least a 30-day notice. Covered dwellings are properties receiving a state or federal subsidies which trigger protections under VAWA or a property that has a federally backed mortgage.

How Does This Effect Local Ordinances?

Laws that were in effect as of August 19, 2020, and never expired are still in place. Examples of these are the City of Los Angeles, City of Fresno, and Alameda County. However, under CTRA and the CHRA, local municipalities or local governments were preempted from creating any law or extension, expansion, renewal, reenactment, or new adoption of a measure, however delineated, that occurs between August 19, 2020, and June 30, 2022. As the laws under both CTRA and CHRA were passed on, or just prior to their expirations, there were cities and counties that had passed their own COVID related tenant protections that have been kept from implementation until the expiration of AB 2179 on June 30, 2022. This means that for any local jurisdiction that passed additional protections, but that were prevented from having those protections go into effect during the pendency of CTRA & CHRA, their local protections have been triggered and are thus effective on July 1, 2022, because they are no longer preempted by state legislation. Examples of these local laws are [LA County Restatement](#) passed on January 25, 2022, providing protections through December 31, 2022 and [San Diego Ordinance O-21293](#) passed on February 12, 2021. These laws were both passed toward the end of the extensions but were both stopped from enforcement upon the extension of statewide protections. Both were immediately effective on July 1, 2022. Landlords should review local jurisdictions where their properties are located to make sure there are no other protections.

Status of Pending Cases Prior to July 1, 2022?

Some landlords may believe that with the expiration of some of these statewide protections, the pending cases will move more swiftly through the court process, this is not necessarily true. Cases pending before July 1, 2022, may still be waiting for the determination of a pending application for rental assistance. Additionally, these cases based upon COVID rental debt may still have the forfeiture set aside, if the tenant is able to demonstrate an approved application and the ability to pay the remaining balance, if any. These cases are still covered by the requirements of CCP 1179.11.

Cases Filed After July 1, 2022?

With the expiration of many of the requirements under CHRA, the judicial council forms needed to be addressed and revised. Landlords no longer need to declare under penalty of perjury that they have applied for rental assistance in order to receive a Summons nor is their default judgment held up for a verification of landlord regarding a denial of assistance. As such, the Judicial Council revised UD-101 and UD-120 forms to remove the language no longer required. The forms became effective on July 16, 2022. The delay on the effective dates of these notices was a result on the Judicial Council waiting to confirm that the legislature would not take any action to extend protections in the final days as it has done many times during the pandemic. This should result in the Summons being issued faster by the court and hopefully the default being granted earlier for cases that are filed after July 1, 2022 since they, theoretically, would not need to be reviewed by the court to determine the status of a rental assistance application.

KTS is hopeful for these expeditated changes but will need to see how the court is processing the cases as it is a practical rather than a legal matter. The forms still require landlords to confirm that they have not received rental assistance, and, for purposes of a default judgment or judgment request, a landlord will need to verify that they do not have a pending rental assistance application to cover the rents demanded as part of the eviction action.

What is the Status of the Courts?

Court timelines are as varied as the jurisdictions they cover. The most recent numbers are as follows:

- Filing the Summons and Complaint?
 - San Diego - 4-5 days
 - Northern California - 1 week to 2 months
 - Orange County - 2 days
- Request for Default
 - San Diego - 5 weeks
 - Northern California - 1 week to 2 months
 - Orange County - Depends on what case: 2 weeks to 3 months for cases prior to April, 2-5 weeks for cases after April
- Trial Dates
 - San Diego - 3 weeks
 - Northern California - 3 weeks
- Obtaining Writ
 - San Diego - 4-5 weeks
 - Northern California - 1 week to 2 months
 - Orange County - 2-5 days
- Sheriff lockouts
 - San Diego - 2-6 weeks from when the request is delivered to the sheriff
 - Northern California - 3-6weeks
 - Orange County - 4-6 weeks from the date Sheriff posts the property.

As for the areas covered by our Los Angeles office: Los Angeles, Ventura, and Kern Counties, it is impracticable to provide timelines as they are constantly evolving and varies on each court. Also, defaults may be changing due to the changes in the court forms. Lockout in these areas are typically 2-3 months.

If you have any questions regarding this alert, please email us at info@kts-law.com for assistance.

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