

## The Future of California Evictions in the COVID Era: California Judicial Council Votes to End Statewide Eviction Moratorium

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On Thursday, August 13, the California Judicial Council elected to rescind Emergency Rules 1 and 2 related to eviction and foreclosure actions in California applicable to both residential and commercial properties, effective September 1, 2020. Emergency Rules 1 and 2, previously put in place on April 6, prevented all unlawful detainer and foreclosure actions statewide, except in cases of public health or safety. The rules were set to sunset 90 days after the California COVID-19 State of Emergency was lifted, but the Judicial Council determined the courts could no longer act as a stopgap for tenants.

In electing to end the statewide court moratoriums, Chief Justice Cantil-Sakauye said: "The judicial branch cannot usurp the responsibility of the other two branches on a long-term basis to deal with the myriad impacts of the pandemic. The duty of the judicial branch is to resolve disputes under the law and not to legislate."

Taking up the challenge made by the Chief Justice, legislation was passed on September 1, 2020 to provide rent and eviction relief to millions of residential tenants across the state. AB 3088, the COVID-19 Tenant Relief Act of 2020, provides that *residential tenants only* cannot be evicted for failing to pay rent that was due between March 1 and August 31. For rent due between September 2020 and January 31, 2021, the bill provides that tenants cannot be evicted for failing to pay rent so long as they make payments of at least 25% of their total rent due each month. Even if a tenant fails to make the required 25% partial monthly payment, it may not be evicted until February 1, 2021 unless it was otherwise subject to an eviction action prior to March 1, 2020. Other rules and conditions apply to tenants seeking rent relief, and impacted landlords should review the legislation with counsel. Nothing in AB 3088, however, prevents a landlord from commencing an eviction action on or after September 2 for any lawfully permitted reason other than a failure to pay rent.

Given that AB 3088 only applies to residential tenancies, the practical effect of the Judicial Council's decision for commercial tenants is more urgent: Landlords may commence unlawful detainer actions beginning on September 2, subject to any local moratoriums that may exist. For example, in San Francisco, a commercial eviction moratorium remains in effect for qualified commercial tenants (i.e. businesses who have under \$25 million in worldwide gross receipts for 2019), for rent due and not paid by a tenant from March 18, 2020 through September 14, 2020. The San Francisco Order does not provide for rent abatement, only rent deferral for qualified tenants, and does not prevent a Landlord from taking other actions, permitted by the lease, following a default in the payment of rent. It is unknown whether San Francisco will continue the moratorium for rent accruing after September 14, 2020.

It remains uncertain whether, practically, courts will be able to handle the anticipated surge in these cases, and whether courts will recognize certain defenses to eviction attributable to the impact of COVID-19 that tenants are likely to raise. As these rulings play out over the next weeks and months, some landlords may continue to elect to pursue remedies other than lease termination.

Regardless, commercial landlords and tenants still face a difficult decision. Tenants are rightly fearful of potential actions from landlords to terminate their leases as a result of a failure to pay rent when they continue to be unable to fully utilize their leased premises and revenues are impacted. Landlords remain challenged by the costs they are incurring with respect to their buildings (without repayment from the tenant) and paying their creditors if they do not have a consistent cash flow of on-time rent.

Nevertheless, unless there is urgent pressure on a landlord to evict a tenant and re-lease a space, the likely best course of action for both parties is to enter into long-term lease extensions and rent relief deferral amendments. There remains great uncertainty and volatility in the market and if a landlord can secure some form of cash flow, even if it is diminished from what was previously budgeted, that may be preferable in the near term compared to having a space sit vacant. Tenants, in return, will be able to obtain needed rent relief until they are allowed to safely call back employees to work in their offices or fully reopen their retail businesses, focusing on developing long-term solutions instead of immediate short-term concerns. Maintaining the confidentiality and non-binding nature of these discussions is a key basis for such discussions. Legal counsel can be helpful in structuring these arguments.

Buchalter is committed to helping our clients assess their rights with respect to COVID-19 and stands ready to assist in navigating these uncharted waters. We will also provide further updates in the event any legislation is passed with respect to rent relief and evictions. ***[Listen to our latest Podcast "Passing Through Commercial Lease Operating Expenses During COVID-19 and the State of Evictions in California."](#)***



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