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**LEGAL AID SOCIETY OF SAN DIEGO'S GUIDE TO AB 3088 SMALL
LANDLORDS AND HOMEOWNER PROTECTIONS:
WHAT SMALL LANDLORDS AND HOMEOWNERS NEED TO KNOW**

Created on September 3, 2020

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AB 3088 Small Landlord and Homeowner Provisions

1. What kind of protections does AB 3088 include for small landlords and homeowners?

AB 3088 temporarily extends protections under the Homeowner Bill of Rights (HBOR) to certain small landlords and homeowners. Under HBOR, mortgage servicers are required to provide specific outreach and communications to borrowers who are at risk of foreclosure. HBOR also protects borrowers from “dual tracking,” preventing a servicer from continuing with the foreclosure process while it reviews a borrower’s



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completed loan modification application. Finally, HBOR provides borrowers with the right to appeal a loan modification denial.

AB 3088 also contains some provisions relating to forbearance, or temporary payment relief, which is addressed in more detail below.

2. When does AB 3088 go into effect?

It goes into effect on August 31, 2020. The protections will stay in effect until January 1, 2023.

3. Who now gets temporary access to protections under the Homeowner Bill of Rights?

This applies to property owners who meet ALL of the following criteria:

- a. Own three or fewer 1-4 unit residential properties;
- b. Have a mortgaged property that is occupied by a tenant who has a lease that was in effect as of March 4, 2020;
- c. The lease must be the result of an “arm’s length transaction.” An “arm’s length transaction” is “a lease entered into in good faith and for valuable consideration that reflects the fair market value in the open market between informed and willing parties.”; AND
- d. Whose tenant is “unable to pay rent due to a reduction in income resulting from the novel coronavirus.”

See Civil Code §2924.15(a)(2).

4. Will this totally prevent foreclosures?

No. AB 3088 does not include a moratorium on foreclosures. It only gives some landlords and homeowners additional protections while they attempt to seek loan modifications.

For example, HBOR does not prevent foreclosure when a borrower cannot submit a complete loan modification application or does not qualify for a loan modification for some reason.

5. What about forbearance options for small landlords and homeowners?

Some mortgage servicers are voluntarily offering forbearance to borrowers, but not all. AB 3088 also contains some provisions relating to forbearance, or temporary payment



relief. This section of the law is called the “COVID-19 Small Landlord and Homeowner Relief Act” (“the Act”). (Civil Code §3273.01 - 3273.16)

6. Who is eligible for the protections under the COVID-19 Small Landlord and Homeowner Relief Act?

In order to receive the protections of the Act, a borrower must meet both of the following two requirements:

- (1) The borrower must have been current on payments as of February 1, 2020;
AND
- (2) The borrower is experiencing a financial hardship related directly or indirectly to COVID-19 that prevents the borrower from making timely payments.

See Civil Code §3273.10(a)(1) and (2).

7. What the COVID-19 Small Landlord and Homeowner Relief Act require from mortgage servicers in relation to forbearance requests?

Under the Act, mortgage servicers are required to do three main things when they receive forbearance requests from borrowers during the applicable time period (August 31, 2020 – January 1, 2023):

- (1) If they deny a request made during the time period above, they must provide written notice to the borrower that explains the specific reason or reasons why forbearance was not provided.
- (2) If the written notice identifies a defect (problem) with the borrower’s request that is curable (can be fixed), the mortgage servicer must do ALL of the following:
 - a. Specifically identify the defect in the written notice;
 - b. Provide 21 days from the mailing date of the written notice for the borrower to fix the defect;
 - c. Accept receipt of the borrower’s revised request for forbearance before the end of the 21 day period above; AND,
 - d. Respond to the borrower’s revised request within 5 business days of receipt of the revised request.
- (3) If the mortgage servicer ultimately denies the request, the mortgage servicer must include the denial notice and information about whether or not forbearance or not forbearance was later granted in the declaration recorded with any Notice of Default.



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See Civil Code §3273.10.

8. Does the COVID-19 Small Landlord and Homeowner Relief Act require that forbearances be granted for a certain length of time?

No. The Act does not specify how long of a forbearance the mortgage servicers have to give you. The mortgage servicer can give you as long or short of a forbearance as it likes.

9. Does the the COVID-19 Small Landlord and Homeowner Relief Act provide any protections if the mortgage servicer doesn't follow the rules as to the written notice/time periods?

The Act allows borrowers who are harmed by violations to pursue injunctive relief, damages, or any other available remedy. Depending on the case, a prevailing borrower may also be able to get attorney's fees and costs.

See Civil Code §3273.15.

10. Does the COVID-19 Small Landlord and Homeowner Relief Act have anything that helps borrowers after forbearance ends?

No, it doesn't require the mortgage servicers to offer any specific type of assistance or repayment plan. The Act just requires mortgage servicers to "comply with applicable federal guidance regarding borrower options following a COVID-19 related forbearance."

See Civil Code §3273.11(a).

Borrowers with federally backed loans will get the benefit of federal guidance.

Borrowers with non-federally backed loans get no additional assistance since there is no applicable federal guidance.