



**LEGAL AID SOCIETY OF SAN DIEGO'S GUIDE TO AB 3088 COVID-19
TENANT RELIEF ACT OF 2020:
WHAT TENANTS AND LANDLORDS NEED TO KNOW**

Amended on November 18, 2020

Please be advised that due to the U.S. being in a state of emergency, government directives and orders, and associated enforcement procedures are rapidly changing. The contents of this document do not have the force and effect of law. This document is intended only to provide clarity for the public regarding existing requirements under the law or agency policies. This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to housing in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, Legal Aid Society of San Diego, Inc. cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation. Please do not hesitate to call us to obtain the most up to date information regarding your situation.

1. What is AB 3088?

AB 3088, the COVID-19 Tenant Relief Act of 2020, was passed and signed into law on August 31, 2020. The COVID-19 Tenant Relief Act of 2020 ("Tenant Act") provides substantial new protections from eviction for all residents. The Tenant Act prohibits a court from finding a tenant guilty of an unlawful detainer before February 1, 2021, subject to certain exceptions, including if the tenant was guilty of unlawful detainer before March 1, 2020. Before October 5, 2020, the bill also prohibits a court from taking specified actions with respect to unlawful detainer actions, including issuing a summons on a complaint for unlawful detainer in any action that seeks possession of residential real property *and* that is based, in whole or in part, on nonpayment of rent or other charges.



2. Who is an “eligible tenant” protected by AB 3088?

Eligible **residential tenants** include those who have experienced COVID-19 related financial distress such as:

1. Loss of income caused by the COVID-19 pandemic;
2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic;
3. Increased expenses directly related to the health impact of the COVID-19 pandemic;
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit a tenant’s ability to earn income;
5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic;
6. Other circumstances related to the COVID-19 pandemic that have reduced a tenant’s income or increased a tenant’s expenses.

If your income or ability to pay rent has been affected by the COVID-19 pandemic, you must notify your landlord by submitting a *Declaration of COVID-19-related financial distress* under penalty of perjury. **Failure to timely give this declaration waives (you lose) the protections under AB 3088.**

Please be aware that AB 3088 does not provide protection for *all* nonpayment of rent situations— the inability to pay rent must be related to or a result of the COVID-19 pandemic. **AB 3088 applies to nonpayment of rent and other financial obligations under a lease, such as a tenant’s obligations to make utilities payments and/or pay late fees.**

3. What type of notices does my landlord need to serve on me?

- **15-day Notice to Pay Rent or Quit**
 - Under AB 3088, the usual notice requirements for “pay or quit” notices are changed only for the “Covered Time Period,” which



- covers **March 1, 2020 to January 31, 2021.**
- For the rent owed during the Covered Time Period, your landlord cannot serve a “3-day notice to pay rent or quit.” Under AB 3088, the landlord must now serve at least a 15-day notice to pay rent or quit (the 15 days do not include weekends and judicial holidays).
 - **“Protected Time Period” - rent owed from March 1, 2020 to August 31, 2020**
 - The 15-day notice must advise the tenant of the fact that they cannot be evicted for failure to pay the rent from March 1, 2020 to August 31, 2020, so long as the tenant delivers a signed declaration of COVID-19-related financial distress to the landlord on or before the date that the notice to pay rent or quit or notice to perform covenants or quit expires. Additionally, the 15-day notice must be accompanied by a blank *Declaration of COVID-19-related financial distress*.
 - **“Transition Period” - rent owed from September 1, 2020 to January 31, 2021**
 - The 15-day notice must advise the tenant that they cannot be evicted for failure to pay 100% of the rent from September 1, 2020 to January 31, 2021 so long as the tenant delivers a signed declaration of COVID-19-related financial distress to the landlord on or before the date that the notice to pay rent or quit or notice to perform covenants or quit expires, **AND**, before January 31, 2021, the tenant pays at least 25% of their monthly rent for each month during the September 1, 2020 to January 31, 2021 time frame. Additionally, the 15-day notice must be accompanied by a blank *Declaration of COVID-19-related financial distress*.
 - For the 25% of rent owed for each month of September 2020 - January 2021 (5 months), you are not required to



pay it by the time rent is due each month. So long as you make one lump sum payment of 25% for each of the 5 protected months by January 31, 2020, your landlord cannot evict you for not paying the remaining rent from September 1, 2020 to January 31, 2021.

4. If I got a 3-day notice to pay rent or quit during the pandemic but given to me before August 31, 2020, does it still have to comply with AB 3088?

Yes. Any 3-day notice to pay rent or quit issued between March 1, 2020 and August 31, 2020 is within the Protected Time Period, and therefore required to comply with AB 3088. This means that the landlord must provide a 15-day notice that advises the tenant that they cannot be evicted for failure to pay the rent from March 1, 2020 to August 31, 2020 if the tenant delivers a signed declaration of COVID-19-related financial distress to the landlord on or before the date that the notice to pay rent or quit or notice to perform covenants or quit expires. Additionally, the 15-day notice must be accompanied by a blank Declaration of COVID-19-related financial distress.

5. I have experienced COVID-19 related financial distress. How and when do I inform my landlord that I am unable to pay my rent?

You must inform your landlord in writing by timely submitting a *Declaration of COVID-19-related financial distress* under penalty of perjury.

Under AB 3088, you are required to return the *Declaration of COVID-19-related financial distress* no later than 15 days (excluding weekends and judicial holidays) after you are served with a notice to pay rent or quit.

- **“Protected Time Period”- rent owed from March 1, 2020 to August 31, 2020**
 - You do not have to wait for the landlord to serve you with a 15-



day notice to pay rent or quit. You can provide one Declaration to cover all rent during the Protected Period (a blank copy can be found at the end of this FAQ).

- If you are an eligible tenant, **DO NOT WAIT TO BE SERVED WITH A 15-DAY NOTICE. YOU SHOULD DELIVER YOUR DECLARATION TO YOUR LANDLORD AS SOON AS POSSIBLE. DO NOT WAIT!**
- **“Transition Period”- rent owed from September 1, 2020 to January 31, 2021**
 - You do not have to wait for the landlord to serve you with a 15-day notice to pay rent or quit. However, you are required to provide a declaration for each month during the Transition Period or a declaration for all months referenced in a 15-day notice to pay rent or quit (a blank copy can be found at the end of this FAQ).
 - If you are an eligible tenant, **DO NOT WAIT TO BE SERVED WITH A 15-DAY NOTICE. YOU SHOULD DELIVER YOUR DECLARATION TO YOUR LANDLORD AS SOON AS POSSIBLE AND EVERY MONTH GOING FORWARD. DO NOT WAIT!**

FAILURE TO PROVIDE NOTICE WITHIN THE REQUIRED DAYS CAN RESULT IN THE LOSS OF AB 3088 PROTECTIONS.

You may provide your landlord your declaration by:

- Delivering in person if such delivery is permitted in the 15-day notice;
- sending an email if such delivery is permitted in the 15-day notice;
- mailing via United States mail to the address indicated in the notice;
 - If no address for personal delivery is given, the declaration will be considered received by the landlord on the date it was post marked if you can show proof of mailing to the address
- using any of the same methods that the tenant can use to deliver the payment pursuant to the notice.



6. What if I am an eligible tenant but do not return my Declaration of COVID-19-related financial distress in time?

If you do not return your Declaration of COVID-19 related financial distress in the time allowed, **you may lose the eviction protections available to you.** You must timely return the form to be protected. You should keep a copy or picture of the signed form for your records. If you fail to submit this documentation, and you do not either pay the amount demanded in the notice or deliver possession of the premises back to your landlord as required by the notice, you will not be covered by the eviction protections enacted by the California Legislature as a result of the COVID-19 pandemic, and your landlord can begin eviction proceedings against you as soon as this 15-day notice expires.

If you fail to timely produce the declaration (and/or supporting documents, which are only required from high-income tenants [refer to Question 7 below for definition of “high-income” tenant])

- Tenants may file the COVID-19 financial distress declaration or supporting documentation (High-income tenants only) within time to file answer (5 court days from service of Summons and Complaint).
- The court will then hold a hearing within 5-10 days’ notice to determine if mistake, excusable neglect, inadvertence, or surprise resulted in tenant’s failure to timely submit declaration or supporting documentation (High-income tenants only) to landlord.
- The best practice would be to timely submit declaration or supporting documentation (High-income tenants only) to your landlord. **Do not rely on the court to understand your inability to timely submit the required documents.** Additionally, this hearing would most likely require the assistance of an attorney to effectively meet the legal requirements.



7. Do I need to provide documentation to demonstrate financial distress related to COVID-19?

AB 3088 does not require a tenant to provide documentation to demonstrate financial distress related to COVID-19 *unless* the tenant is considered “high-income.” A tenant is deemed “high-income” for the purposes of AB 3088 if the tenant has an annual household income of 130% or more of the median income, as published by the Department of Housing and Community Development in the Official State Income Limits for 2020, for the county in which the residential rental property is located. A high-income tenant under AB 3088 does not include a tenant with a household income of less than \$100,000. All lawful occupants of a residential rental unit, including minor children, shall be considered in determining household size.

A landlord may require a high-income tenant submit documentation supporting the claim that the tenant has suffered COVID-19-related financial distress if the landlord has proof of income showing the tenant is a high-income tenant.

8. If I am a high-income tenant, what kind of documentation do I need to provide my landlord to demonstrate that I cannot pay the rent as a result of COVID-19, and when do I need to provide it?

Acceptable documentation of COVID-19-related financial distress Any form of objectively verifiable documentation that demonstrates the COVID-19-related financial distress the tenant has experienced is sufficient to satisfy the requirements of this subdivision, including the proof of income (see below), a letter from an employer, or an unemployment insurance record.



Under AB 3088, “proof of income” may include the following:

- Tax returns;
- A W-2;
- A written statement from a tenant’s employer that specifies the tenant’s income;
- Pay stubs;
- Documentation showing regular distributions from a trust, annuity, 401k, pension, or other financial instrument;
- Documentation of court-ordered payments, including, but not limited to, spousal support or child support;
- Documentation from a government agency showing receipt of public assistance benefits, including, but not limited to, social security, unemployment insurance, disability insurance, or paid family leave;
- A written statement signed by the tenant that states the tenant’s income, including, but not limited to, a rental application.

If you are an eligible tenant, it would be best practice to serve the declaration by the day your rent is due or before you are served with a 15-day notice to pay rent or quit.

Start collecting this documentation early! You need to provide it to your landlord as soon as possible and will need to provide additional documentation later if you need more time to pay your rent.

The law requires that any medical or financial information provided to a landlord must be kept confidential and only used for the sole purpose of evaluating the tenant’s claim for eligibility under the emergency eviction moratorium.

9. Can the courts issue a Summons for non-payment evictions?

AB 3088 **temporarily** restricts courts from issuing a residential tenant-defendant a summons for an eviction case based on non-payment of rent, unless necessary to protect public health and safety, which must be established by the court and on the record. Meaning, if an eviction is filed against a tenant for non-payment and the landlord does not claim a public



health and safety need, the time for the tenant to respond to a new eviction case will not begin until after **October 5, 2020**. The court may issue a summons for eviction cases based on causes of action other than non-payment starting September 2, 2020.

10. If I am an eligible tenant under AB 3088, do I still have to pay my rent?

Yes. AB 3088 does not relieve you of your responsibility to pay rent. If you have not experienced COVID-19 related financial distress you are required to pay your rent and you are not protected by AB 3088.

For those covered by AB 3088, it converts COVID-19 related financially distressed tenants' rental obligations to civil debt within the jurisdiction of small claims court until February 1, 2025. Rental debt may not serve as the basis for a cause of action for eviction or foreclosure until February 1, 2025. **However, landlords may begin collecting rental debt in small claims court starting March 1, 2021.**

11. If I am protected by AB 3088, can my landlord charge me late fees or interest?

AB 3088 does not explicitly prevent the charge of late fees. Accordingly, your landlord may most likely be able to collect late fees **only** if provided for by your written rental agreement.

City of San Diego **does not** allow your landlord to charge you late fees for rental payments that fall within the terms of the respective ordinances.

12. I received a “no-fault eviction” notice from my landlord, am I protected by AB 3088?

A so-called “no-fault eviction” is an eviction where the tenant is evicted through no fault of their own. They paid their rent on time and followed the rules; however, the landlord has decided at the end of the tenant's lease term that they no longer wish to keep renting to that tenant.



As of January 1, 2020, a new state-wide law, AB 1482, went into effect providing tenant protections for “no-fault evictions.” Please call us or contact an attorney if you have further questions about how AB1482 may apply to you.

Under AB 3088, no-*cause* evictions (meaning where the landlord is evicting a tenant for no stated reason at all) are not permitted against any tenant until February 1, 2021.

However, certain no-*fault* eviction actions *are* allowed under AB 3088. Please refer to Question 13 below for information on which types of no-fault evictions are permitted under AB 3088.

In the city of San Diego (until 9/30/2020), you may be protected in the event of a no-fault eviction notice if:

- The no-fault eviction notice was served or filed on or after March 4, 2020; *and*
- The no-fault eviction is not necessary for the health and safety of tenants, neighbors, or the landlord.

13. Can a Landlord still file an eviction for reasons other than nonpayment for covered time period?

Yes, under AB 3088 the landlord may still file the following eviction cases:

At-fault evictions:

- Nonpayment evictions for rent owed before March 1, 2020;
- Nonpayment evictions where the tenant fails to either: (1) pay the rent demanded, or (2) turn in the declaration of COVID-19 related financial distress within 15 day of being served with a notice to pay rent or quit;
- Tenant materially breaches of the lease after being provided with written notice of the violation **and** has been given at least 3 court days to correct the violation;



- Maintaining, committing, or permitting the maintenance or commission of nuisance;
- Tenant's refusal to execute a written extension or renewal of lease for an additional term with similar duration and terms;
- Criminal activity by the tenant on the residential property, including common areas, or the criminal activity or threat is directed to the owner or agent of the residential property on or off the property;
- Assigning or subletting lease in violation of the lease or permission of the landlord;
- Tenant's refusal to allow the owner to enter the residential property in according with state notice requirements;
- After the tenant provides written notice to the landlord that they will terminate the tenancy and the tenant fails to timely vacate;
- When the employee/ agent fails to vacate after their termination as an employee of the landlord or landlord's agent;

No-fault evictions:

- When the owner or their spouse/domestic partner, children, grandchildren, parents, or grandparents intend to occupy the property.
 - For leases entered after July 1, 2020, this exception can only be used if there is a provision in the lease allowing the owner to terminate the lease for owner move in.
- The landlord intends to withdraw the residential property from the rental market and no longer be in the business of leasing residential property.
- Where the property needs to be either demolished or substantially remodeled to maintain compliance with applicable laws governing the habitability of residential rental units;
- Where the owner of the property has entered into a contract for sale of a single family home/ condo; the buyer intends to occupy the property; and the buyer is not a real estate investment trust,



corporation, or LLC with at least one member a corporation.

If the landlord brings an eviction as listed above, the landlord may not recover rental debt in connection to any award of damages in the eviction case. Unless, the eviction is based on tenant failing to either; (1) pay the rent demanded and (2) turn in the declaration of COVID-19 related financial distress within 15 day of being served with a notice to pay rent or quit.

14. Does AB 3088 offer any additional protections to eligible tenants?

Yes.

- **Masking**

- Yes. All nonpayment evictions filed between March 4, 2020 and January 31, 2021 are masked regardless of outcome. That means the eviction will not show up on your credit report and it will not be available to the general public. Small claims actions for COVID-19-related rental debt are also masked.

- **Retaliation**

- It is also unlawful for a landlord to bring an action for unlawful detainer based on a cause of action other than nonpayment of COVID-19 rental debt for the purpose of retaliating against the lessee because the lessee has a COVID-19 rental debt.

- **Illegal Lockouts/Utility Shut offs**

- AB 3088 provides for additional damages if a landlord illegally lockouts out a tenant or shuts off utilities. On top of the regular damages a tenant can obtain, AB 3088 provides additional damages of at least \$1000.00 and no more than \$2,500.

15. If I live in a garage, live in a mobile home, rent a room, or live in an illegal rental unit, does AB 3088 protect me?

Yes. AB 3088 applies to every residential tenant regardless of the type



of unit they live in or how long they have lived there. If you need more detailed information, please call us at 877-LEGAL-AID (877-534-2524).

16. If I am undocumented, does AB 3088 protect me?

Yes. AB 3088 applies regardless of legal status for all residential tenants.

17. What do I do if my landlord violates the emergency eviction moratorium and tries to evict me?

If this happens, please call us at 877-LEGAL-AID (877-534-2524).

If your landlord has served you with an eviction notice or initiated eviction proceedings against you, please contact us right away at 877-LEGAL-AID (877-534-2524).

18. I still have questions, who can I contact for assistance?

The Legal Aid Society is open during this pandemic and our intake specialists can speak with you Monday - Friday, 9:00 a.m. to 5:00 p.m.

Call us at: **877-LEGAL-AID (877-534-2524)**

DECLARATION OF COVID-19 RELATED FINANCIAL DISTRESS

(DATE)

(ADDRESS OF LANDLORD OR LANDLORD'S AGENT)

Dear _____,
(LANDLORD OR LANDLORD'S AGENT)

I am currently unable to pay my rent or other financial obligations under the lease in full because of one or more of the following:

1. Loss of income caused by the COVID-19 pandemic.
2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.
3. Increased expenses directly related to health impacts of the COVID-19 pandemic.
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income.
5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.
6. Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of income and/or increased expenses.

Signed under penalty of perjury:

Dated:

Dated:

TENANT'S NAME (ALL TENANTS OVER 18 YRS. OLD) _____
TENANT'S SIGNATURE (ALL TENANTS OVER 18 YRS. OLD)