



**LEGAL AID SOCIETY OF SAN DIEGO'S GUIDE TO THE CITY OF
CARLSBAD AND STATE OF CALIFORNIA EVICTION MORATORIUMS
RELATED TO COVID-19:
WHAT TENANTS AND LANDLORDS NEED TO KNOW**

Created on August 17, 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 an “eviction moratorium”?

A “moratorium” is the temporary prohibition of an activity. The City of Carlsbad has passed an eviction moratorium ordinance. However, **the ordinance only protects commercial tenants**. Therefore, residential tenants must rely on state-level eviction moratoriums for protection against eviction, which are discussed below.



2. What protections do I have as a residential tenant in the City of Carlsbad?

Judicial Council Emergency Rule No. 1

On April 6, 2020 the Judicial Council of California adopted Emergency Rule No. 1 that effectively stops all evictions unless necessary to protect public health and safety for the duration of the COVID-19 emergency. The rule is applicable to all evictions regardless of the basis. The rule:

- Prohibits a court from issuing a summons after a landlord files an eviction case, unless a court finds on the record that the action is necessary to protect public health and safety.
- Prohibits a court from entering a default judgment against the tenant because the tenant failed to file a response unless the court finds:
 - The eviction is necessary to protect public health and safety; and
 - The tenant failed to respond in the time required by law, including the 60-day extension contained in the Governor's Executive Order N-37-20.
- For eviction cases where the tenant has responded, the new rule prevents a court from setting the case for trial earlier than 60 days after a trial is requested, unless necessary to protect public health and safety.
- Requires any trial in an eviction case that was already scheduled as of April 1st to be postponed at least 60 days from the initial trial date.
- The rule will remain in effect until **September 1, 2020**.

Governor Newsom's Executive Order N-37-20

On March 27, 2020, Governor Newsom issued Executive Order N-37-20 to provide relief to residential tenants in the state of California. The Order does not prohibit evictions, it merely gives tenants an extended period of time to respond to an eviction complaint if they are able to establish that their inability to pay the full amount of rent is related to the COVID-19 pandemic.



The Order states:

- The deadline to respond to a complaint that seeks to evict a tenant for inability to pay rent is extended for a period of 60 days if the tenant satisfies the following requirements:
 - Prior to March 27, 2020 the tenant paid rent due to the landlord pursuant to an agreement;
 - The tenant notifies the landlord in writing before the rent is due, or within 7 days after the rent is due, that the tenant needs to delay some or all of the rent payment because of an inability to pay the full amount due to reasons related to COVID-19, including but not limited to:
 - The tenant could not work because the tenant was sick with a suspected or confirmed case of COVID-19 or caring for a household or family member with a suspected or confirmed case of COVID-19;
 - The tenant experienced a lay-off, loss of hours, or other income reduction resulting from COVID-19, the state of emergency, or related government response; or
 - The tenant needed to miss work to care for a child whose school was closed in response to COVID-19.
 - The tenant retains documentation, such as termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters or statements from an employer or supervisor explaining the tenants changed financial circumstances.
- The Order will remain in effect through May 31, 2020.



3. I cannot pay my rent because I have lost income due to COVID-19. Do I need to notify my landlord?

Judicial Council Emergency Rule No. 1:

The Judicial Council Emergency Rule does not require a tenant to notify their landlord of their inability to pay rent. The Rule prevents a landlord from evicting a tenant while the Rule is in effect. However, once the COVID-19 pandemic is over and the Rule is withdrawn, your landlord will be able to proceed with an eviction action after September 1, 2020 and you will have to pay all rent due. Accordingly, out of an abundance of caution, we strongly recommend you follow the notice and documentation procedures required under the Governor's Executive Order as outlined below.

Executive Order N-37-20:

Under the Order, you must inform your landlord in writing that you are unable to pay the rent due to a COVID-19 related issue and provide supporting documentation.

FAILURE TO PROVIDE NOTICE OR DOCUMENTATION WITHIN THE REQUIRED DAYS WAIVES THE PROTECTIONS OF THE EVICTION MORATORIUM.

NOTICE MUST BE PROVIDED EACH MONTH YOU ARE NOT ABLE TO PAY RENT BECAUSE OF COVID-19.

Executive Order N-37-20 provides as follows:

- You must notify your landlord in writing before the rent is due, or within a reasonable period of time afterwards not to exceed seven (7) days, that the tenant needs to delay all or some payment of rent because of an inability to pay the full amount due to reasons related to COVID-19.
- Governor's executive order states "documentation must be provided to the landlord no later than the time upon payment of back due rent." This language is ambiguous, as the Executive Order does not



specify a timeline for repayment of back due rent. Accordingly, we highly recommend providing the documentation within 10 business days of providing notice, which is the timing required for commercial tenants under Carlsbad's ordinance.

You may inform your landlord and provide documentation by writing a letter, sending an email, or sending a text message to your landlord or your landlord's representative.

4. 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?

Judicial Council Emergency Rule 1 does **not** require a residential tenant to provide documentation to prove they cannot pay rent as a result of COVID-19. However, as discussed above, we strongly recommend you follow the documentation procedures required under the Governor's Executive Order as outlined below.

Under Executive Order N-37-20, an eligible residential tenant **must provide** supporting documentation to show they cannot pay the amount of rent due because they were impacted by the COVID-19 pandemic. The Order states "documentation must be provided to the landlord no later than the time upon payment of back due rent." This language is ambiguous, as the Executive Order does not specify a timeline for repayment of back due rent. Accordingly, we highly recommend providing the documentation as soon as possible, and not later than **within 10 business days of providing notice**, as outlined in Carlsbad's commercial eviction moratorium.

Acceptable documentation may include, but is not limited to:

- Letter or note from your job stating that you have been laid off, that your hours have been reduced, or that your place of business is closed due to COVID-19;
- Letter or text message from your child's school/pre-school/daycare regarding closures;
- Text message or email from your employer asking you not to come to



work;

- Photo showing your business or place of employment is closed due to COVID-19;
- Screenshots from Uber, Lyft, Instacart, DoorDash, etc. applications showing that you have experienced reduced income;
- Pay stubs or copies of paychecks for a few months showing that your income has been reduced;
- Medical documentation related to COVID-19;
- Receipts for medical costs related to COVID-19;
- A signed declaration under penalty of perjury certifying the reason why you have experienced a reduced income or difficulty paying your rent as a result of COVID-19 or the governmental response to COVID-19.

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.

5. If I am an eligible tenant, do I still have to pay my rent?

Yes. An emergency eviction moratorium does not relieve you of your responsibility to pay rent. If you are able to pay some portion of your rent, you must pay whatever amount you can (this amount will not be considered a "delayed payment").

Judicial Council Emergency Rule 1 does not specify a timeline for payment of back rent.

Executive Order N-37-20 does not specify a timeline for payment of back rent. The Order states "[n]othing in this Order shall prevent a tenant who is able to pay all or some of the rent due from paying that rent in a timely manner or relieve a tenant of liability for unpaid rent."



6. If I am protected by an eviction moratorium, may my landlord charge me late fees or interest?

Judicial Council Emergency Rule 1 is silent on the issue of late fees.

Executive Order N-37-20 dated March 27, 2020 from Governor Newsom is silent on the issue of late fees.

Because the Judicial Council Emergency Rule 1 and Executive Order N-37-20 do not explicitly prevent the charge of late fees, your landlord may most likely be able to collect late fees **only** if provided for by your written rental agreement.

7. I received a “no-fault eviction” notice from my landlord, am I protected by this emergency eviction moratorium?

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. They followed the rules. However, the landlord has decided at the end of the tenant’s lease term that he no longer wishes to rent to that tenant.

Under the new Judicial Council rules, **no-fault evictions are prohibited** unless they are necessary to protect public health and safety.

As of January 1, 2020, a new state-wide, 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.

No-fault evictions **are not protected** by Governor Newsom’s Executive Order.



8. What protections are available for commercial tenants in the City of Carlsbad?

The City of Carlsbad's emergency eviction moratorium applies only to commercial tenants. The resolution orders evictions of commercial tenants in the City of Carlsbad to be suspended until the local emergency is terminated, or the Governor withdraws Executive Order N-28-20, whichever occurs sooner, if the commercial tenant satisfies the following requirements:

- Prior to March 4, 2020, the commercial tenant was current on rent due;
- The commercial tenant **notifies the landlord in writing or by email before rent is due, or within a reasonable time afterwards not to exceed 10 business days**, that the commercial tenant needs to delay all or some payment of rent because they are unable to pay due to reasons related to COVID-19, including but not limited to:
 - The business was not critical or essential as designated by federal state or local officials;
 - The business was critical or essential, but could not be operated in compliance with social distancing and other requirements by state and local public health officials;
 - The business was critical or essential, but was owner-operated and the owner was sick with, showing symptoms of, or had been directly exposed to COVID-19, or was caring for another who was sick, showing symptoms, or directly exposed to COVID-19, or was caring for a minor child who did not have school or child care supervision;
- The commercial tenant experienced a substantial decrease in the tenant's business income resulting from COVID-19, the state of emergency, or related government response;
- The commercial tenant **must provide documentation within 10 business days of providing notice** showing their inability to pay rent was due to COVID-19.



- Nothing in the resolution allows a commercial tenant who is able to pay some or all rent due to delay paying that amount.
- Nothing in the resolution relieves a commercial tenant of liability for unpaid rent, including late fees.
- The commercial tenant **must pay back rent due within three months** of the expiration of the local emergency, unless the landlord and the commercial tenant agree upon an alternative payment plan.
- If a commercial tenant elects to move out while the eviction moratorium is in effect, all rent due is owed at the time the tenant vacates the premises.
- The resolution may be used as an affirmative defense in an unlawful detainer (eviction) proceeding commenced in violation of the resolution.

9. What relief is available for landlords who cannot pay their mortgage?

On March 16, 2020, Governor Newsom signed Executive Order N-28-20 directing mortgage lenders to implement an immediate moratorium on foreclosures due to a borrower's inability to pay as a result of the COVID-19 pandemic. This moratorium will last until May 31, 2020. If you find yourself unable to pay your mortgage due to COVID-19, immediately contact your servicer. Your servicer will likely be unaware of Governor Newsom's Executive Order. Immediately fax or email the Order to them highlighting paragraph 5 of the Order. Make sure you retain any documentation showing your inability to pay due to COVID-19. The ongoing pandemic is fluid and changes every day. Governor Newsom may issue additional Executive Orders to provide further clarification.

At the same time, the Governor announced that the following banks have agreed to defer mortgage payments for 90 days for those impacted by COVID-19:

- Citigroup;
- JP Morgan Chase;



- US Bank;
- Wells Fargo; *and*
- Over 200 state chartered banks and credit unions.
- These banks have also agreed to waive and reverse any late fees as well as other fees including early CD withdrawal fees.

There are to be no new foreclosure sales or evictions at least through May 31, 2020.

There are also no credit score changes for accessing this relief.

In addition, on April 6, 2020, the Judicial Council of California adopted Emergency Rule No. 2 related to judicial foreclosures. The rule:

- Prevents a court from taking any action or issuing any decisions or judgments unless necessary for public health and safety.
- Postpones any legal deadlines for filing foreclosure cases.
- Extends the period for electing or exercising any rights in a foreclosure case, including any right of redemption from a foreclosure sale, or petitioning the court in relation to such a right.
- This rule will remain in effect until September 1, 2020.

**10. I live in a garage, rent a room, or live in an illegal rental unit.
Does this emergency eviction moratorium protect me?**

Yes. Judicial Council Emergency Rule No. 1 and Executive Order N-37-20 apply to every residential tenant in 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).

**11. What do I do if my landlord violates the emergency
eviction moratorium rules and orders and tries to evict me?**



Justice Begins Here

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).

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

The Legal Aid Society of San Diego is providing full services during this pandemic by **phone only** as our office are currently closed to the public, so please call our intake specialists Monday - Friday, 9:00 a.m. to 5:00 p.m to find out if we can help you. **Call us at: 877-LEGAL-AID (877-534-2524).**

NOTICE OF INABILITY TO PAY RENT DUE TO COVID-19

(DATE)

(ADDRESS OF LANDLORD OR LANDLORD'S AGENT)

Dear _____,
(LANDLORD OR LANDLORD'S AGENT)

I, as detailed herein, am providing you timely notice of my inability to make my regular monthly rental payment due to financial impacts related to COVID-19, for the property commonly referred to as:

(YOUR ADDRESS)

Specifically, I am unable to make my monthly rental payment because I have experienced (i) a substantial decrease in household or business income (including but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand,) or substantial out-of-pocket medical expenses; and (ii) the decrease in household or business income or the out-of-pocket medical expenses described above was caused by the COVID-19 pandemic, or by a local, state, or federal government response to COVID-19.

Within ten business days of providing this notice, I will provide you with documentation or other objectively verifiable information that, due to financial impacts related to COVID-19, I am unable to pay my regular monthly rent. This documentation may include, but is not limited to, letters from my employer, financial statements, business records, physician's letter, bills, and/or a combination thereof. I understand this does not discharge my duty to pay rent per our rental agreement.

Thank you,

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

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

LEGAL AID SOCIETY OF SAN DIEGO
QUESTIONS ABOUT EVICTIONS? CALL US AT 877-LEGAL-AID (877-534-2524)