



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

Amended 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 Encinitas has passed an eviction moratorium ordinance, which prevents a landlord from evicting an eligible tenant while the eviction moratorium is in effect. The requirements for qualifying as an eligible tenant are discussed below.



2. Who is an “eligible tenant” protected by the eviction moratorium?

Eligible **residential and commercial tenants** include those whose income and ability to pay rent have been substantially affected by the COVID-19 pandemic. You may be protected by the emergency eviction moratorium if you have experienced any of the following (this is not an exhaustive list):

- Being sick with the COVID-19 or caring for a household or family member who is sick with COVID-19;
- Loss of employment, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19;
- Compliance with an order from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency;
- Extraordinary out-of-pocket medical expenses related to COVID-19;
- Child care needs arising from school closures related to COVID-19.

If your income or ability to pay rent has been affected by the COVID-19 pandemic, you must notify your landlord and provide documentation demonstrating the relationship between your inability to pay rent and COVID-19. **Failure to give timely notice waives the protections under the eviction moratorium.**

Please be aware that most of the emergency eviction moratoriums do not provide protection for all nonpayment of rent – the inability to pay rent must be related to or a result of the COVID-19 pandemic or any governmental response to the COVID-19 pandemic.



3. I lost income as a result of COVID-19. When and how do I inform my landlord that I am unable to pay my rent?

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.

- **Encinitas**
 - If you live in the City of Encinitas, you must notify your landlord in writing that you are unable to pay the rent due to a COVID-19 related issue **on or before the date rent is due**, and provide supporting documentation **within two weeks of providing notice**.
- **Executive Order N-37-20** dated March 27, 2020 from Governor Newsom 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 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 as soon as possible, and no later than required by your local ordinance as outlined above.
 - It is our opinion that the Governor's executive seven (7) day notice requirement overrides more restrictive local notice requirements.



However out of an abundance of caution, we advise that you provide your written notice no later than the notice required by your local ordinance as outlined above.

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?

An eligible tenant, **commercial or residential**, must provide supporting documentation to show they cannot pay the amount of rent due because they were impacted by the COVID-19 pandemic. **(See attached notice template for commercial and residential tenants.)**

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 on if you need more time to pay your rent.

In the City of Encinitas, you must provide documentation **within two weeks** of providing notice of inability to pay.

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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 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").

In the City of Encinitas, the City Council declared a local emergency on March 18, 2020. The emergency eviction moratorium will remain in effect until the City Council of Encinitas determines there is no longer a local emergency, or the Governor withdraws Executive Order N-28-20, whichever occurs sooner. Eligible tenants have up to six months from that date to repay 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 the eviction moratorium, may my landlord charge me late fees or interest?

The City of Encinitas **does not** allow your landlord to charge you late fees for rental payments that fall within the terms of the eviction moratorium ordinance.

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

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.

If you live in the city of Encinitas, you may be protected in the event of a no-fault eviction notice if:

- Rent was due on or after March 27, 2020; *and*
- You are an “eligible tenant” as discussed above.



No-fault evictions **are not protected** by the emergency ordinances of the City of San Diego, nor Governor Newsom's Executive Order.

8. Are there any additional protections against evictions in California?

Yes. On April 6, 2020 the Judicial Council of California adopted an 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 1 to be postponed at least 60 days from the initial trial date.
- The rule will remain in effect until **September 1, 2020**.

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. The emergency eviction moratorium applies 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 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).

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 two weeks 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)