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LEGAL AID SOCIETY OF SAN DIEGO'S GUIDE TO STATE-LEVEL PROTECTIONS AGAINST EVICTIONS AND FORECLOSURES: WHAT TENANTS AND LANDLORDS NEED TO KNOW

Amended on August 13, 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 are the statewide protections against evictions during the COVID-19 emergency?

a. The Judicial Council's Emergency Rule 1

On April 6, 2020, the California's Judicial Council adopted an emergency rule that effectively halts evictions, other than those necessary to protect public health and safety, for the duration of the COVID-19 pandemic. The rule is applicable to all courts and to all eviction cases, whether they are based on a tenant's inability to pay rent because of financial impacts experienced during the pandemic or for any other reason.

Specifically, the emergency rule provides:

- A court cannot issue a tenant-defendant (commercial and residential) a summons



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for an eviction case, unless necessary to protect public health and safety, which must be established by the court and on the record. Effectively this means, if an eviction is filed against a tenant for any reason, the time for the tenant to respond to a new eviction case will not begin until after September 1, 2020.

- Through September 1, 2020, a court cannot enter an automatic default judgment against the tenant-defendant because the tenant failed to file a response, unless the court finds the eviction is necessary to protect the public health and safety, which must be established by the court and on the record, and the tenant failed to respond in the time required by law, including the extension that may apply under the Governor's Executive Order, N-37-20.
- A court is prohibited from setting eviction cases for trial earlier than 60-days after a trial is requested for evictions where the tenant has already responded or appeared, unless necessary to protect public health and safety.
- A court must postpone any trial in an eviction case that was already scheduled as of April 2020 until at least 60 days after the initial trial date.
- Tenants are not required to provide any notice to their landlord or any supporting documents. The protections in the Judicial Council emergency rule automatically apply to all defendants in an unlawful detainer.

b. Governor Newsom's Executive Orders

- Penal Code Section 396(f) provides that it is unlawful for anyone to evict a residential tenant of residential housing for 30 days following the declaration of a state of emergency by the President of the United States or the Governor, or the declaration of a local emergency by any official, board, or other governing body that has the authority to make such a declaration.
- Executive Order N-28-20 stated that the time limitation contained in Penal Code 396(f) was to be extended through May 31, 2020. Executive Order N-66-20



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extended the time limitation through July 28, 2020. And Executive Order N-71-20 extended this time period through September 30, 2020.

- Executive Order N-28-20, as extended by Executive Order N-66-20 through July 28, 2020, and extended again by Executive Order N-71-20 through September 30, 2020, provides local governments with the authority to enact residential and commercial eviction moratoriums.

2. Do I still owe my landlord rent?

Yes. Neither the Judicial Council's emergency rule nor the Governor's Executive Orders relieve you of your responsibility to pay rent. If you can pay all or some portion of your rent, you should try to pay. The Judicial Council's emergency rule only delays the eviction process until after September 1, 2020, and Executive Order N-71-20 only prevents evictions through September 30, 2020.

3. What are the statewide protections against foreclosures during the COVID-19 State of Emergency?

a. The Judicial Council's Emergency Rule 2 regarding foreclosures:

On April 6, 2020, the Judicial Council of California adopted an emergency rule related to judicial foreclosures. Specifically, the emergency rule provides:

- A court is prohibited from taking any judicial foreclosure actions or issuing any decisions or judgments unless necessary for public health and safety.
- Legal deadlines for filing judicial foreclosure cases are postponed.
- The time period for exercising any rights in a judicial foreclosure case, including any right of redemption from a foreclosure sale, or petition to the court in relation to such a right is extended.



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b. The Governor's Executive Orders

Paragraph 5 of Executive order N-28-20 directs 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. 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.

4. How long are these protections in effect?

a. Judicial Council Emergency Rules 1 and 2

Both emergency rules will apply until September 1, 2020.

b. The Governor's Executive Orders

It appears that the protections against residential evictions shall remain in place through September 30, 2020, per Executive Order N-28-20, as extended by N-66-20 and N-71-20.

It appears that the protections against foreclosures shall remain in effect for the duration of the state of emergency as declared by the Governor of California.

5. What do these rules mean for state, county, and local eviction moratoriums?



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Though these rules effectively put evictions and foreclosures on hold, they do not establish any new tenant rights or defenses to an eviction, address requirements for notifying landlords or providing documentation when tenants are unable to pay rent due to financial impacts related to COVID-19, or address how repayment will be handled. If possible, tenants should try to comply with any local eviction moratorium as they may provide additional protections, to the extent they are still in effect. *Please see our other FAQs regarding such state, county, and local eviction moratoriums.*

6. 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)**