



**LEGAL AID SOCIETY OF SAN DIEGO'S GUIDE TO SB 91, THE COVID-19
RELIEF AND FEDERAL RENTAL ASSISTANCE ACT:
WHAT TENANTS AND LANDLORDS NEED TO KNOW**

Amended on February 19, 2021

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.

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1. What is SB 91?

SB 91, COVID-19 Relief and Federal Rental Assistance Act, was passed and signed into law on January 29, 2021. The COVID-19 Relief and Federal Rental Assistance Act (“Tenant Act”) extends AB 3088’s COVID-19 related protections, and provides substantial new protections from eviction for eligible tenants. The Tenant Act prohibits a court from finding a tenant guilty of an unlawful detainer before July 1, 2021, subject to certain exceptions, including if the tenant was guilty of unlawful detainer before March 1, 2020.

2. Who is an “eligible tenant” protected by SB 91?

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 will lose) the protections under SB**



91.

Please be aware that SB 91 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. **SB 91 also 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 SB 91, a landlord must serve you a 15-day Notice to Pay Rent or Quit (the 15 days do not include weekends and judicial holidays) for rent that came due during the **“Covered Time Period.”**
 - **“Covered Time Period” - spans March 1, 2020 to June 30, 2021.**
 - For the rent owed during the “Covered Time Period,” your landlord cannot serve a “3-day notice to pay rent or quit.”
 - The **“Covered Time Period”** is broken down into two distinct time periods, the **“Protected Time Period”** and the **“Transitional Time Period”**:
 - **“Protected Time Period” - rent owed from March 1, 2020 to August 31, 2020 (AB 3088)**
 - A 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*.
 - If you serve your Landlord with a *Declaration of COVID-*



19-related financial distress you can never be evicted on the basis of unpaid rent during the Protected Time Period. The outstanding rent is still owed; however it can only be pursued in small claims court as a civil debt.

- **“Transitional Time Period” - rent owed from September 1, 2020 to June 30, 2021**
 - A 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 June 30, 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 June 30, 2021, the tenant pays at least 25% of the total rent that came due and went unpaid from September 1, 2020 to June 30, 2021. Additionally, the 15-day notice must be accompanied by a blank *Declaration of COVID-19-related financial distress*.
 - You are not required to pay the 25% payment requirement each month when rent is due. As long as you pay 25% of the total amount of unpaid rent between September 1, 2020 and June 30, 2021, your landlord cannot evict you for not paying the remaining 75% of unpaid rent from September 1, 2020 to June 30, 2021.

4. If I received a 3-day notice to pay rent or quit during the “Covered Time Period” before SB 91 went into effect, is it still valid?

No. Any 3-day notice to pay rent or quit demanding rent between March 1, 2020 and June 30, 2021 is required to comply with SB 91. If your landlord previously served you a 3 day notice to pay rent or quit demanding rent from March 1, 2020 to June 20, 2021, the landlord must serve you a 15-day notice to pay rent or quit to comply with SB 91. Additionally, the 15-



day notice must advise you that you cannot be evicted for failure to pay the rent from March 1, 2020 to June 30, 2021 if you deliver 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 pay 25% of the rent that accrued from September 01, 2020 to June 30, 2021. Additionally, the 15-day notice must be accompanied by a blank *Declaration of COVID-19-related financial distress*.

SB 91 **does not** require landlords to reserve a 15-day notice to pay rent or quit if the previously served 15-day notice to quit complied with the requirements of AB 3088.

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 SB 91, 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 (AB 3088)**
 - 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 DELIEVER YOUR DECLERATION TO YOUR LANDLORD AS SOON AS POSSIBLE. DO NOT WAIT!**

- **“Transitional Time Period”- rent owed from September 1, 2020 to**



June 30, 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 AGAIN EVERY MONTH GOING FORWARD. DO NOT WAIT!**

FAILURE TO PROVIDE NOTICE WITHIN THE REQUIRED DAYS CAN RESULT IN THE LOSS OF SB 91 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 or supporting documents (High-Income tenants only) [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?

SB 91 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 SB 91 if the tenant has an annual household income of 130% (\$120,510 for family of 4) or more of the median income (\$92,700 for household of 4), 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. (ex: \$92,700 is the current median income for a household of



4 in San Diego County; so a household of 4 with an annual income of at least 130% of that amount, or \$120,510, would be deemed “high-income.”). A high-income tenant under SB 91 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 SB 91, “proof of income” may include the following:

- 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 on 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 SB 91.

9. Does SB 91 provide rental assistance to eligible tenants?

Yes. SB 91 establishes a rental relief fund for **residential tenants** who have experienced COVID-19 related financial distress. SB 91 will establish an estimated \$2.4 billion-dollar rental assistance fund with money received from the federal government. The state will distribute the money to counties throughout the state based on 2019 Census data.

The rental assistance fund will prioritize households in the following order: (1) less than 50% of the area median income; (2) communities disproportionately impacted by COVID-19, and then (3) remaining households with less than 80% of area median income.



The rental assistance funds can be used for rental arrears, prospective rent payments, utilities, and other expenses related to housing incurred due, directly, or indirectly, to the novel coronavirus disease (COVID-19) outbreak. However, rental assistance funds used to cover arrears will be given priority over utilities, prospective rent payments, and other housing expenses. The assistance for rental arrears will be limited to compensating eligible households for 80% of unpaid rent accumulated from April 1, 2020 to March 31, 2021.

To receive the funds, the landlord must agree in writing to accept the 80% as full satisfaction of the debt (rent, fees, interest, and other financial obligations under the lease) for the specified time period. Meaning, the landlord would forgive/waive the remaining 20% and would not be able to collect it in an eviction or small claims.

10. Can my landlord evict me if I have an application pending for rental assistance?

Evictions: Before a judgment can be entered in favor of landlord in an unlawful detainer for rent, or other financial obligations accrued between April 1, 2020 to June 30, 2021; the landlord must verify **all** the following under penalty of perjury:

- The landlord **has not received** any rental assistance or other financial compensation for any other source relating to the amount demanded in the notice of the complaint; and
- The landlord **has not received** any rental assistance or other financial compensation for any other source **after the service of the notice** in complaint; and
- The landlord does not have **any pending applications** for rental assistance or other financial compensation from any other source relating to the amount demanded in the notice of the complaint; and
- The landlord does not have **any pending applications** for rental assistance or other financial compensation from any other source **after the service of the notice** in complaint.



11. If I am eligible for rental assistance, what happens if my landlord refuses to accept the rental assistance funds available through SB 91?

SB 91 requires landlords to attach documentation with their eviction filing, showing that the landlord made a good faith effort to investigate if governmental rental assistance was available for their tenant. Additionally, they are required to seek government rental assistance for the tenant or cooperate with the tenant's efforts to obtain rental assistance from any **government entity or other third party** (so long as it does not create a tenancy with 3rd party).

If landlord fails to comply with SB 91 requirements to seek rental assistance, the court may reduce the damages awarded in an eviction seeking to recover COVID-19 rental debt, unless the tenant did not meet the eligibility requirement or funds were not available.

Additionally, if your landlord refuses to participate in rental assistance program, eligible tenants may still apply for rental arrears assistance. Rental assistance would be limited to 25% of the eligible household's unpaid rental debt accumulated from April 1, 2020, to March 31, 2021.

12. I qualified for rental assistance, what do I do if my landlord refuses to accept it or does not want to complete the necessary documents?

A landlord's refusal to accept rental assistance could be source of income discrimination depending on the source of the funds. Assistance under SB 91 is specifically defined as a source of income that is protected against discrimination under California state law. You may be able to apply for rental assistance on your own, but you could have additional rights. If your landlord is refusing to participate in rent assistance programs, please call us at 877-LEGAL-AID (877) 534-2524.



13. If I am an eligible tenant under SB 91, do I still owe my rent?

Yes. SB 91 does not relieve you of your responsibility to pay rent. Rather, if you have experienced COVID-19 related financial distress, SB 91 converts the rent you are unable to pay during the “Protected Time Period” to a civil debt. The civil debt cannot be the basis for an eviction so long as you comply with the requirements outlined above, but it can still be pursued by the Landlord in small claims court. **Landlords may begin collecting rental debt in small claims court starting August 1, 2021.**

14. Do I still owe my rent if I did not experience COVID-19 related financial distress?

Yes. SB 91 does not forgive rent under any circumstance. Further, if you have not experienced COVID-19 related financial distress, you are not an "eligible tenant" under SB 91 and cannot convert missed rent payments during the “Protected Time Period” to a civil debt.

15. Can my landlord sue me in small claims for the unpaid rent if I have a pending rental assistance application?

No. Before a judgment can be entered in favor of landlord for rent or other financial obligations accrued between April 1, 2020 to June 30, 2021; the landlord must verify **all** the following under penalty of perjury:

- The landlord **has not received** any rental assistance or other financial compensation for any other source relating to the amount demanded; and
- The landlord does not have **any pending applications** for rental assistance or other financial compensation from any other source relating to the amount demanded.

16. If I am protected by SB 91, can my landlord charge me late fees or interest?



SB 91 does not allow landlords to charge or collect fee for late payments of COVID-19 rental debt.

SB 91 also prevents landlords from increasing fees charged to tenants or charge tenant fees for service previously provided by landlord without charge.

SB 91 does allow landlords to temporarily reduce or make unavailable services or amenities to comply with federal, state, and local public health orders (e.g., onsite gyms or other communal amenities).

17. Can my landlord apply my security deposit or future rent payments to COVID-19 rental debt?

Security Deposit: No, SB 91 prevents the landlord from applying the debt to COVID-19 rental debt UNLESS, the tenant has agreed in writing to allow the security deposit to be applied.

Current and Future Rent Payments: SB 91 limits landlord's ability to apply rent payments to satisfy past COVID-19 rental debt. The landlord may only apply rental payments to the prospective month's rent UNLESS the tenant agrees to in writing.

18. Am I responsible for landlord's attorney's fees if they file an eviction against me?

Generally, the court will only award attorney's fees to the prevailing party if provided for in a written contract between the parties. It is common for residential leases to have attorney's fees provided to the prevailing party if there is litigation. The attorney's fees can either be capped at a certain amount or provides for "reasonable attorney fees." If your written contract, or if you have an oral agreement, does not award attorney's fees to the prevailing party, then each party is responsible for their own attorney's fees.



SB 91 caps attorney's fees for the prevailing party if attorney's fees were provided per a written agreement **and** the case was litigated under **ordinary circumstances**. If the eviction is **uncontested** the cap is **\$500.00**. If the eviction is **contested** attorney's fees are capped at **\$1000.00**.

The court can look at the following in determining if the case was litigated under **ordinary circumstances**:

- The number and complexity of pre- and post-trial motions;
- The nature and extend of discovery performed;
- If the case was tried by a jury or by a judge;
- The length of the trial; or
- Any other factor the court finds relevant including whether the tenant or landlord would have been eligible for rental assistance payments.

19. I received a “no-fault eviction” notice from my landlord, am I protected by SB 91?

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.

Under SB 91, “no-fault” evictions are still allowed, however there are strict requirements that a landlord must follow in order to evict you for a reason that is not your fault. Further, as of January 1, 2020, a new state-wide law, commonly referred to as AB 1482, went into effect providing tenant heightened protections for “no-fault” evictions.

If you receive an eviction notice for “no-fault” reason, please call us at 877-LEGAL-AID (877-534-2524).

20. Can a Landlord still file an eviction for reasons other than nonpayment during the “Covered Time Period”?



Yes. Under SB 91 the landlord may still pursue an eviction based on:

- 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 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;

If the landlord pursues an eviction based on one of the "at fault" reasons 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 rent owed prior to March 1, 2020, 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.

21. Does SB 91 offer any additional protections to eligible tenants?



Yes.

- **Masking**

- Yes. All nonpayment evictions filed between March 4, 2020 and July 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.
- SB 91 allows for reasonable attorney's fees in any action brought for damages for retaliatory eviction.

- **Illegal Lockouts/Utility Shut offs**

- SB 91 provides for additional damages if a landlord illegally locks a tenant out or shuts off utilities. On top of the regular damages a tenant can obtain, SB 91 provides additional damages of at least \$1,000.00 and no more than \$2,500. The increased damages will remain in effect until July 1, 2021.

- **Applying to Future Housing**

- **SB 91 prevents housing providers/landlords, tenant screening companies, or other companies that evaluate tenants, from using alleged COVID-19 rental debt as a negative factor. SB 91 prevents landlords from denying a prospective tenant's application on the basis of having COVID-19 rental debt.**

22. If I live in a garage, live in a mobilehome, rent a room, or live in an illegal rental unit, does SB 91 protect me?

Yes. SB 91 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).



23. If I am undocumented, does SB 91 protect me?

Yes. SB 91 applies regardless of legal status for all residential tenants. Additionally, SB 91 prevents the landlord from reporting, or threatening to report, tenants (and other individuals who landlords know are associated with the tenants) to immigration authorities as retaliatory.

24. 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).

25. 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)