

State of California and City of Los Angeles Enact New Tenant Protections in Response to COVID-19 Pandemic

Client Alert | March 31, 2020

As state and local governments rapidly respond to the novel coronavirus (COVID-19) pandemic, in the previous 72 hours each of California Governor Gavin Newsom, the Los Angeles City Council, and Los Angeles Mayor Eric Garcetti has enacted significant new measures governing evictions for certain tenants who are unable to pay rent as a result of the pandemic. The statewide executive order by Governor Newsom applies only to residential tenants, while the City's ordinance applies protections to both residential and smaller commercial tenants. Additionally, by Public Order of Mayor Garcetti, the City of Los Angeles has temporarily frozen rent increases on all rent-stabilized units in the City.

These measures are summarized below, and add to a growing list of local measures across jurisdictions throughout California that are intended to protect tenants impacted by the COVID-19 pandemic, including ordinances and emergency orders in Culver City, Santa Monica, West Hollywood and others. Because of these diverse local actions, and the fact that the Governor's statewide executive order does not preclude local jurisdictions from adopting their own measures, each jurisdiction may have slightly different rules governing these matters.

Statewide-Eviction Protections Ordered by Governor Newsom

On March 27, 2020 Governor Newsom issued Executive Order N-37-20 (the "Executive Order") that enacted two new statewide protections for residential tenants. Notably, this Executive Order goes further than an earlier order issued on March 16, 2020, which had allowed local governments to enact eviction restrictions, but had not independently created any statewide eviction restrictions.

The Executive Order extends the period for a tenant to respond to an unlawful detainer action for an additional sixty (60) days beyond the current statutory periods. Such extension applies to any tenant who is served with a complaint while the Executive Order is in effect that seeks to evict the residential tenant for non-payment of rent. Accordingly, this Executive Order would not apply to an unlawful detainer action for which the complaint was served prior to March 27, 2020. In addition, a tenant eligible for this protection must satisfy the following three criteria:

- (a) the tenant paid rent prior to March 27, 2020 pursuant to an agreement with the landlord (the Executive Order does not specify that the agreement must be in writing);
- (b) the tenant notifies the landlord in writing before rent is due, or within a reasonable period (not to exceed seven (7) days) thereafter, that the tenant needs to delay all or some of the rent payment due to an inability to pay for reasons related to the COVID-19 pandemic; and
- (c) the tenant retains verifiable documentation, such as termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters from an employer or

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supervisor, explaining the tenant's changed financial circumstances. The documentation must be provided to the landlord no later than the time back-due rent is paid.

The Executive Order also prohibits enforcement of a writ to evict a tenant from a residence or dwelling unit due to non-payment of rent if the residential tenant meets the same criteria set forth above.

The Executive Order makes clear that it does not prevent a tenant who is able to pay all or a some of the rent due from paying the rent in a timely manner, nor does it relieve a tenant from liability for unpaid rent. Unlike the City of Los Angeles' ordinance discussed below, the Executive Order does not expressly prohibit landlords from imposing late fees or charging interest on late payments.

City of Los Angeles Enacts an Eviction Protection Ordinance for Residential Tenants and Some Commercial Tenants

On March 27, 2020, the Los Angeles City Council unanimously approved a far-reaching urgency ordinance (the "City Ordinance") that, amongst other tenant protections, prohibits landowners from evicting many residential and commercial tenants for the non-payment of rent during the City's declared coronavirus (COVID-19) local emergency. The City Ordinance codifies many of the tenant protections already provided by previous Public Orders issued by Mayor Garcetti since the March 4, 2020 declaration of a local emergency, and Mayor Garcetti has since rescinded those previous Public Orders to avoid conflict with the City Ordinance. The new City Ordinance goes farther, however, and contains additional tenant protections, including an obligation on residential landlords to provide affirmative written notice to residential tenants about the protections provided by the City Ordinance. Mayor Garcetti signed the ordinance on March 31, 2020, and the Ordinance took effect immediately upon publication.

The City Ordinance amends Chapter IV of the Los Angeles Municipal Code ("LAMC") by adding Article 14.6, which provides: (1) a prohibition on evictions of residential and some commercial tenants for failure to pay rent due to COVID-19; (2) a prohibition on no-fault evictions of residential tenants during the local emergency period; and (3) a suspension on the withdrawal of occupied residential units from the rental market under the Ellis Act (codified at California Government Code Section 7060 *et seq.* and LAMC Section 151.22). These protections will remain in place until the end of the local emergency period as declared by the Mayor.

Effective Date and Retroactivity

The City Ordinance was enacted pursuant to the City Council's urgency ordinance power and thus became effective immediately upon publication. The provisions retroactively apply starting on March 4, 2020 (the date on which the local emergency was first proclaimed). Thus, at least in Los Angeles, the restrictions would apply to evictions that were in process, before the State's March 27 Executive Order.

Prohibition on Specified Commercial Evictions

Owners of commercial real property are prohibited from evicting commercial tenants if the tenant is unable to pay rent due to circumstances related to the COVID-19 pandemic. Commercial tenants subject to the City Ordinance's protections will have up to three (3) months following the expiration of the local emergency period to repay any past due rent. Owners are prohibited from charging any interest or late fees on unpaid rent. Because the expiration of the local emergency period may be extended from time to time, the precise time period in which owners of real property can expect payment of any past due rent is not yet known.

The City Ordinance only applies to commercial tenants who are not any one or more of the following: (1) a multi-national company, (2) a publicly traded company, and (3) a company

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that employs more than five hundred (500) employees. Accordingly, any commercial tenant that falls within these three categories does not receive the protections provided by the City Ordinance.

Prohibition on Residential Evictions

Owners of residential real property are prohibited from evicting any residential tenant if the tenant is unable to pay rent due to circumstances related to the COVID-19 pandemic. Residential tenants will have a period of up to twelve (12) months following the expiration of the local emergency period to pay any past due rent, and owners are again prohibited from charging any interest or late fees on unpaid rent. Further, owners of residential real property are prohibited from exercising no-fault evictions during the local emergency period. Moreover, owners may not evict a tenant based on the presence of unauthorized occupants, pets, or any nuisance related to COVID-19.

Finally, owners of residential property are required to provide affirmative written notice to residential tenants of the protections afforded by the City Ordinance. Such notice must be provided within thirty (30) days of the effective date of the City Ordinance, and failure to provide this notice may result in monetary penalties.

Notably, the City Council narrowly declined to adopt an amendment to the City Ordinance that would have broadly prohibited all evictions during the pendency of the local emergency. Supporters of the failed amendment expressed concern that, as drafted and approved, the City Ordinance would allow landlords to initiate evictions for a myriad of reasons unrelated to payment of rent, and force tenants to assert as an affirmative defense that the real cause of the eviction was non-payment of rent related to the COVID-19 pandemic. To partially address this perceived loophole, the City Council added the prohibitions noted above on eviction due to the presence of unauthorized occupants, pets, or any nuisance related to COVID-19.

Additionally, the City Ordinance expressly contemplates that the City's Housing and Community Investment Department (HCID) will promulgate options to help landlords and residential tenants mutually agree upon a repayment plan within ninety (90) days of the first missed rent payment or expiration of the local emergency period. This creates the opportunity for landlords to proactively reach out to tenants to encourage a mutually agreed-upon repayment plan.

Prohibition on Removal of Occupied Residential Units

Owners of residential real property are prohibited from removing any occupied unit from the rental market under the Ellis Act for a period of sixty (60) days following the expiration of the local emergency period.

City of Los Angeles Public Order of March 30, 2020 Freezing Rent Increases for Residential Units Subject to the City's Rent Stabilization Ordinance

On March 30, 2020, Mayor Garcetti issued a Public Order prohibiting property owners from increasing rents on occupied rental units that are subject to the Los Angeles Rent Stabilization Ordinance (also known as the "RSO") beginning on the date of the Public Order, and extending through sixty (60) days after the expiration of the local emergency period. Because the expiration of the local emergency period may be extended from time to time, the precise duration of the March 30, 2020 Public Order is not yet known.

Los Angeles' RSO applies to residential rental units first constructed prior to October 1, 1978, as well as certain "replacement" housing units, as specified in the RSO. City records provide that approximately 624,000 apartments fall under the RSO. Normally, the RSO allows owners of affected apartment buildings to increase rents by 3% or 4% every year. Single-family rentals and most newer apartments, neither of which are subject to rent control, will remain unaffected by the March 30, 2020 Public Order.

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Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 pandemic. For additional information, please contact any member of the firm's Coronavirus (COVID-19) Response Team.

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