

Protection for Renters During the COVID-19 Crisis

Governor Newsom proclaimed a State of Emergency in California on March 4, 2020 and thereafter issued Executive Order N-28-20 to protect renters affected by COVID-19 from eviction. The Executive Order, in part, suspends state law limitations on local jurisdictions that impose restrictions on evictions, giving local governments the authority to place restrictions on evictions for nonpayment of rent due to COVID-19. The suspension of state laws with respect to evictions due to COVID-19 applies as of March 4, 2020. Accordingly, counties and cities in California have adopted emergency ordinances to protect renters. Recently adopted ordinances and regulations in San Mateo, Santa Clara, and San Francisco counties are summarized below.

A. San Mateo County

1. Eviction Protection for Renters of Residential Property in San Mateo County

On March 24, San Mateo County adopted Emergency Regulation 2020-001, placing a moratorium on residential evictions in all cities and towns in San Mateo County for nonpayment of rent due to COVID-19 and for no-fault evictions, unless necessary for the health and safety of the tenant, other tenants in the tenant's building, the landlord, or the landlord's family.¹ The regulation is in effect until May 31, 2020, unless extended. During this period, before a landlord may issue a 3 day notice, the landlord must provide the tenant with a new San Mateo County form, "Notice Re: San Mateo County Emergency Regulation 2020-001," that informs the tenant of his/her rights under the new Emergency Regulation.²

For tenants who are not able to pay rent due to COVID-19, they have 14 days after receiving the San Mateo County notice form to inform their landlords of their inability to make rent payments and to provide documentation in support. Tenants may inform landlords of their inability to pay by letter, email or text. Tenants are required, however, to make partial rent payments if they are able. Upon the expiration of the regulation, all deferred rent is due within 90 days. If a tenant is still unable to pay, he/she may provide the landlord with documentation of the inability to pay, which extends the deferral of payment for an additional 30 days. A tenant may provide additional documentation every 30 days thereafter, not to extend beyond 180 days from the date the regulation terminates. A landlord may not charge late fees during the 180-day period.

2. Eviction Protection for Nonprofits and Small Businesses in the City of San Mateo

The Board of Supervisors of San Mateo County banned evictions of business with gross receipts under \$2.5 million annually for the unincorporated areas of San Mateo County. The

¹ The regulation does not apply to evictions due to the move-in of the owner or owner's family.

² Any 3-day notice served prior to the effective date of the Emergency Regulation but not expired will be deemed served the day following the expiration of the Emergency Regulation.

County noted that while its ban only applies to unincorporated areas, cities within San Mateo County could use the ban as guidance for adopting their own moratoriums.

The San Mateo City Council adopted Ordinance No. 2020-2 on March 23, 2020, effective as of that date, which imposes a ban on commercial evictions for nonprofits and for commercial tenants with annual gross receipts less than \$25 million in the City of San Mateo. The Ordinance is automatically repealed on June 22, 2020 but may be extended if an emergency still exists. During the period of the ban, non-profits and small business tenants may not be evicted for non-payment of rent if they are unable to pay due to COVID-19 or for a no-fault eviction, unless it is for the safety of the tenants, neighbors, or landlords. Landlords may not serve 3-day notices or seek to evict tenants during this period if they know the tenant is unable to pay. A landlord knows a tenant is unable to pay if, within 14 days after rent is due, the tenant notifies the landlord in writing, including text or email, of its inability to pay due to COVID-19 and provides supporting documentation. The deferred rent is due within 6 months after the local emergency is lifted, but the landlord may not collect late fees.

3. Eviction Protection for Small Businesses in the City of Millbrae

The City of Millbrae has adopted an urgency ordinance providing a moratorium on evictions for non-payment of rent by small commercial tenants directly impacted by COVID-19. Small commercial tenants are defined in the ordinance as businesses with gross receipts of not more than \$5 million annually in 2019.³ The moratorium is effective through May 31, 2020, unless extended. During this period, commercial property owners must provide tenants with written notice of the urgency ordinance, using a form from the City Manager's office, before evicting a small commercial tenant. Upon receipt of the form, the tenant has 14 days, or more if reasonable under the circumstances, to provide the owner with evidence of the inability to pay due to a COVID-19 related loss of income. A tenant must pay all rent due within 90 days after the expiration or termination of the ordinance, but an additional 30-day extension is allowed if the tenant provides the commercial property owner with written notice and additional documentation of COVID-19 related losses. A tenant may provide two further written notices for additional 30-day extensions, up to a maximum extension for unpaid rent of 180 days after the expiration of the ordinance. The tenant remains liable for all unpaid rent, but late fees may not be assessed during the 180-day period.

4. Eviction Protection for Small Business in the City of Menlo Park

The City of Menlo Park adopted City Ordinance 1068, establishing a moratorium on evictions for non-payment of rent by small business commercial tenants directly impacted by COVID-19 and for no-fault evictions. The urgency ordinance is in effect through May 31, unless extended, and applies to businesses with gross receipts of not more than \$2.5 million for the 2019 calendar year.

³ Gross receipts will be prorated for business that did not operate for the entire 2019 calendar year.

During the period of the local emergency, landlords may not evict small business tenants for the non-payment of rent if the tenant demonstrates an inability to pay due to financial impacts related to COVID-19 or for a no-fault eviction, unless necessary for the health and safety of the tenants, neighbors, or landlord. Prior to any eviction action, the owner of a commercial property must provide a tenant with written notice of the urgency ordinance. The notice must inform the tenant: 1) the amount of rent due; 2) that the rent is due unless the tenant promptly establishes in writing that the rent due qualifies for a deferral under the ordinance; and 3) that notice from the tenant to the landlord of the deferral of rent must be provided within 14 days of receipt by the tenant of the owner's notice. The tenant has 14 days to notify the landlord in writing, including email or text, of the tenant's inability to pay rent because of financial impacts related to COVID-19 and to provide documentation in support. All deferred rent is due within 90 days after the termination or expiration of the ordinance. However, if the tenant is still unable to pay at this time, the tenant may provide the owner with another written notice and additional documentation to extend the payment date another 30 days. Additional notices and documentation may be provided every 30 days thereafter, but the deadline to pay may not be extended beyond 180 days after the urgency ordinance expires. No late fees may be assessed during this period.

B. Santa Clara County

Santa Clara County adopted Ordinance No. NS-9.287, temporarily banning evictions for the non-payment of rent by residential and commercial real property tenants due to COVID -19. The ordinance became effective on March 24, 2020 and prohibits evictions through May 31, 2020. The Santa Clara Ordinance provides that a landlord cannot terminate a tenancy for the failure to pay rent if the tenant demonstrates the inability to pay due to COVID-19. To demonstrate an inability to pay, a tenant must show a substantial loss of income from: job loss; layoffs; a reduction in the number of compensable hours of work; a store, restaurant, office, or business closure; a substantial decrease in business income caused by a reduction in opening hours or consumer demand; the need to miss work to care for a homebound school-age child or a family member infected with coronavirus; other similarly-caused loss of income; or substantial out-of-pocket medical expenses for the tenant or his/her immediate family members related to the 2020 COVID-19 pandemic.

Upon expiration of the Ordinance on May 31, 2020, unless extended, the tenant must pay all rent due within 120 days. No late fees may be charged during the 120-day period. If a city within Santa Clara County adopts a more restrictive ordinance or regulation, that ordinance or regulation applies in place of the County Ordinance.

C. San Francisco County

Mayor Breed issued a Proclamation declaring a local emergency on February 25, 2020 for the City and County of San Francisco. On March 18, 2020, the San Francisco Superior Court stayed all unlawful detainer cases for 90 days, except those arising from violence, threats of violence, or health and safety issues. As of the time of the writing of this article, the Mayor has issued 10

supplements to the Proclamation. Below is a summary of the regulations on residential and commercial evictions, as of the time of the writing of this article.

1. Eviction Protection for Renters of Residential Property in San Francisco County

In a Mayor's Order dated March 23, 2020, landlords in San Francisco are prohibited from recovering possession of a residential property if a tenant has failed to make a payment due on or after March 13, 2020 and has provided notice within 30 days of the date rent was due that the tenant is unable to pay due to financial impacts related to COVID-19.⁴ The Order is effective until the sooner of 30 days after its effective date of March 23 (ending on April 22, 2020), the Proclamation of Emergency terminates, or the Mayor issues another order.

Under the Order, within one week of providing notice of the inability to pay, the tenant shall also provide documentation or other objectively verifiable information that the tenant is unable to pay his/her rent due to COVID-19. If a tenant provides such documentation, he/she is entitled to an automatic one-month extension to pay. If the tenant fails to pay rent due after the extension, the landlord then must inform the tenant of the breach, and the parties must discuss the matter in good faith and try to develop a payment plan. A tenant has up to six months after the expiration or termination of the Order to pay the rent due. During this 6-month period, the landlord may request additional documentation of the tenant's ongoing inability to pay, but a tenant's failure to timely respond to a follow-up request for documentation does not invalidate the 6-month period.

The Order also provides that there is a moratorium on attempts to recover possession of rental units from residential tenants if the effective date of the termination is within 60 days after the Order expires or is terminated, except in cases where the landlord seeks to recover possession due to violence, threats of violence or health and safety issues. Nothing in the Order relieves tenants of the obligation to pay rent or prohibits a landlord's ability to recover possession of property through means other than eviction for non-payment.

2. Eviction Protection for Renters of Commercial Property in San Francisco County

The Mayor's Proclamation and Supplements thereto also provide for a temporary moratorium on attempts to recover possession of a unit due to non-payment of rent by specified commercial tenants. On April 15, 2020, the Mayor issued an Executive Order which extends the moratorium through May 17, 2020.

The moratorium applies to commercial tenants registered to do business in San Francisco with gross receipts of \$25 million or less.⁵ Tenants who meet these criteria and fail to pay rent due on or after March 17, 2020 are entitled to written notice and an opportunity to cure the non-payment violation. Landlords must provide a written notice to tenants and specify a cure period. The cure period must be at least one month from the date tenants receive written notice, but landlords are encouraged to offer a longer period. At the expiration of the cure period, tenants

⁴ The temporary moratorium also applies to housing that is rent controlled or regulated by the City.

⁵ Gross receipts will be prorated for business that were not operating for the entire 2019 tax year.

must pay the rent due or provide documentation that they are unable to pay due to a financial impact related to COVID-19.

If a tenant provides documentation of an inability to pay, the cure period is extended by an additional month so that the landlord and tenant can discuss the matter in good faith and try to develop a payment plan. If the parties are unable to agree on a payment plan before the expiration of the extended cure period, the tenant must pay the rent due or provide additional documentation of his/her inability to pay, which extends the cure period by another one month period. A tenant may obtain additional monthly extensions following the same procedures each month with a maximum extension period of 6 months from the date rent was originally due. Even where allowed in a lease, landlords are discouraged but not prohibited from using a tenant's security deposit to cover unpaid rent.

As is evident by the continuing stream of news and guidelines on how to deal with the health, economic and personal effects of COVID-19, the situation is constantly changing. The orders and regulations discussed above are subject to additional extensions and modifications.