

# Richmond Rent Program Community Workshop Webinar: Understanding the COVID-19 Tenant Relief Act of 2020 (Part of AB-3088)

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# NOTICE

## NOTICE

- THIS PRESENTATION IS A **BROAD OVERVIEW** OF A RECENTLY PASSED STATE LAW (LESS THAN 3 MONTHS OLD). THE CALIFORNIA LEGISLATURE PASSED THIS LAW AND THE RICHMOND RENT PROGRAM HAS NO AUTHORITY REGARDING ITS REQUIRMENTS, APPLICABILITY, OR ENFORCEMENT. THESE ISSUES MAY ONLY BE DECIDED BY A COURT OF PROPER JURISDICTION.
- THIS PRESENTATION IS NOT INTENDED TO ACT AS LEGAL ADVICE. IF YOU REQUIRE LEGAL ADVICE, YOU SHOULD CONTACT AN ATTORNEY.
- FINALLY, THIS PRESENTATION, INCLUDING THE QUESTION-AND-ANSWER SESSIONS, IS TO PROVIDE **GENERAL INFORMATION ONLY**. ANY QUESTIONS REGARDING FACT SPECIFIC SITUATIONS SHOULD BE ADDRESSED AT ANOTHER TIME BY CONTACTING THE RICHMOND RENT PROGRAM AT (510) 234-7368 or BY SENDING AN EMAIL TO [rent@ci.richmond.ca.us](mailto:rent@ci.richmond.ca.us). ANSWERS TO FACT SPECIFIC OR HYPOYHETICAL QUESTIONS WILL NOT BE PROVIDED A RESPONSE DURING THIS PRESENTATION.

# REMINDER

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- This presentation is regarding the main contents of the COVID-19 Tenant Relief Act of 2020 and a few associated laws within AB-3088 only. (The entirety of AB-3088 is around 50 pages long).
- Question-and-Answer -
  - Given the complicated nature of the COVID-19 Tenant Relief Act of 2020, and in order to provide the most clarity on the content of this presentation, a brief question-and-answer period will follow each slide. **There will be no final question-and-answer period after the end of the final slide of this presentation.** If you have any questions, please type them following each slide.
  - Should any participant require further or more specific information, they may contact the Richmond Rent Program during normal business hours at (510) 234-7368 or by sending an email to [rent@ci.richmond.ca.us](mailto:rent@ci.richmond.ca.us)

## An Overview of AB 3088: Purpose of the Bill

- Millions of Californians are unexpectedly, and through no fault of their own, facing new public health requirements and unable to work and cover many basic expenses, creating tremendous uncertainty for California tenants, small landlords, and homeowners.
- The bill aims to stabilize the housing situation for tenants, landlords, and homeowners, while addressing the impacts that the pandemic has had on housing.

## An Overview of AB 3088: Purpose of the Bill Continued

- Stabilizing the housing situation for tenants and landlords is to the mutual benefit of both groups and will help the state address the pandemic, protect public health, and set the stage for recovery. It is, therefore, the intent of the Legislature and the State of California to establish through statute a framework for all impacted parties to negotiate and avoid as many evictions and foreclosures as possible.
- The bill does not relieve tenants, homeowners, or landlords of their financial obligations, but aims to forestall massive social and public health harm by preventing unpaid rental debt from serving as a cause for eviction or foreclosure, preventing negative credit reports as a result.

# The Components of AB 3088

AB-3088 makes a series of changes to various Civil Codes and Codes of Civil Procedure including:

- Mobile Home Parks
- Anti-Retaliation Statute
- State Anti-Gouging and Just Cause (AB1482)
- Homeowners Bill of Rights
- Code of Civil Procedure - Notice requirements
- New statutes:
  - COVID-19 Small Landlord and Homeowner Relief Act
  - COVID-19 Tenant Relief Act of 2020

# Under AB 3088, What Was Changed?

The Act amends Sections 1946.2, 1947.12, and 1947.13 of, to amend, repeal, and add Sections 798.56, 1942.5, 2924.15 of, to add Title 19 (commencing with Section 3273.01) to Part 4 of Division 3 of, and to add and repeal Section 789.4 of, the Civil Code, and to amend, repeal, and add Sections 1161 and 1161.2 of, to add Section 1161.2.5 to, to add and repeal Section 116.223 of, and to add and repeal Chapter 5 (commencing with Section 1179.01) of Title 3 of Part 3 of, the Code of Civil Procedure, relating to COVID-19 relief, and declaring the urgency thereof, to take effect immediately.

# The COVID-19 Tenant Relief Act of 2020

The COVID-19 Tenant Relief Act of 2020 (“CTRA”) is intended to:

- Coordinate the State’s response to COVID-19 rent related evictions.
- Permit the Courts enough time to adjust to the backlog of cases.
- Provide tenants a clear, consistent path of obtaining protection from eviction when they cannot pay rent due to a COVID-19 related issue.
- Provide landlords with basic certainty on when they can collect the rent-debt owed and creates a process whereby its easier for landlords to access the courts to seek the debts owed.

Until otherwise stated, all following slides are in reference to the COVID-19 Tenant Relief Act of 2020. Applicable sections are located at the bottom of each slide.



## What does the Act do?

The Act modifies and/or creates the following areas to achieve its goal:

- Amends Summons and Complaints
- Creates Notice of Rights
- Creates two categories of debt
- Amends Notice of Termination of Tenancy for nonpayment of Rent
- Creates Declaration of Covid-19 related financial distress
- Amends Unlawful Detainers Motions
- Amends UD Records
- Prohibits certain evictions
- Amends Small Claims Court actions and limitations

# Definitions

- The CTRA defines the period of which it covers.
  - “Covered” time period- The time period between March 1, 2020, and January 31, 2021.
- The CTRA splits rent debt into two categories:
  - “Protected” time period- The time period between March 1, 2020, and August 31, 2020.
  - “Transition” time period- The time period between September 1, 2020, and January 31, 2021.
- These 3 terms will be referenced throughout the presentation.

See Code of Civil Procedure 1179.02 et seq.

# Notice of Rights

- On or before September 30, 2020, landlords must provide tenants who owe rent between the periods of March 1, 2020 and August 31<sup>st</sup> 2020, with a written notice in 12 pt. font that explains the tenant's rights under the CTRA.
  - The notice must recite **verbatim** language provided in state law.
  - The notice is separate and distinct from the notice of termination of tenancy.
  - Failure to provide this notice invalidates any subsequent notice that is served for during the periods of March 1, 2020 through August 31, 2020.
  - If you have specific questions regarding this notice or how to move forward with an unlawful detainer, you should consult with attorney.

See Code of Civil Procedure 1179.04

# Notice of Termination of Tenancy for Nonpayment of Rent

- The following applies only to residential notices of termination of tenancy for nonpayment of rent served anytime between March 1, 2020, and January 31, 2021 (“Covered Period”):
  - Must be a 15-day notice, excluding weekends and judicial holidays.
  - Must contain an unsigned copy of a declaration of Covid-19 related financial distress, with verbatim language provided by the state. (1179.02)
  - At the very least, must be in the same language the lease was negotiated (English, Spanish, etc.)
  - Must specify the amount owed and apportion it by month based on the day it became due.
  - Must contain specific **verbatim** language from the CTRA
    - For notices that seek rent owed during the “protected” period the language comes from 1179.03(b)(4)
    - For notices that seek rent during the “transition” period, the language comes from 1179.03(c)(4)

See Code of Civil Procedure 1179.03

# Notice of Termination of Tenancy for Nonpayment of Rent Continued

- What happens if a landlord's notice does not comply with any of these requirements?
  - The landlord's notice is defective.
  - If you reach the UD stage, the case may be dismissed and depending on your written lease, a landlord may owe attorney fees.
  - The notice requirement is also retroactive and applies during the "covered" period.

See Code of Civil Procedure 1179.03 et seq.

## Notice of Termination of Tenancy for Nonpayment of Rent Continued

- What if a landlord serves a notice based on rent owed that overlaps between the “protected” and “transition” time period?
  - The Landlord must serve two separate and distinct notices.
  - Each notice must comply with the separate rules governing the “protected” period and the “transition” period.
  - The language in each applicable notice is **verbatim** and issued by the state.
  - Failure to use such language renders the notice void.

See Code of Civil Procedure 1179.03(e)

# Declaration of Covid-19 related financial distress

- How does a tenant take advantage of the protections under State law?
  - If the Tenant only owes debt during the “protected” time period, the tenant need only return the signed declaration to the landlord prior to the expiration of the 15-Day notice of termination of tenancy for the state law protections to attach . Once returned, the Landlord can **never** evict the tenant for the debt owed during the protected time period.
  - If the tenant owes debt during the “transition” time period, the tenant must
    - Return the signed declaration to the landlord prior to the expiration of the 15-day notice of termination of tenancy ; **AND**
    - By January 31, 2021, pay 25% of the total amount of rent owed.
    - If the tenant does these two things, the tenant can **never** be evicted for rent debt owed during the transition time period.

See Code of Civil Procedure 1179.03(g)(1), 1179.03(g)(2)(B)

## Returning the Declaration

- How does a tenant return the Declaration?
  - Through U.S. mail.
    - Tenants are encouraged to ensure they can track it and it is to the address provided in the notice.
  - In person.
  - Via email, if the notice provides for email.
  - Through the same method the tenant delivers rent, if possible.
  - Tenants are encouraged to document the sending of the Declaration by any means possible.
  - Similarly, landlords are encouraged to document the sending of any applicable notices and declaration forms.
- If a tenant failed to return the Declaration within the expiration of the 15-Day Notice, assuming the landlord has filed an unlawful detainer, tenants may still submit their Declaration to the court and if the court finds that the tenant's failure to submit the Declaration "was the result of mistake, inadvertence, surprise, or excusable neglect," then the court will dismiss the case.

See Code of Civil Procedure 1179.03(f); 1179.03(h)(1)(B)



## High-Income Tenant(s)

- Can a Landlord ask the tenant for proof that they have been impacted by COVID-19?
  - Generally, No.
  - Exception, where the Landlord already knows that a tenant is a high-income tenant
    - High-income tenant is a tenant with an annual household income of 130% of the median income as published by the Department of Housing and Community Development (Household income must be above \$100,000).
    - This exception only applies only if the landlord already has proof of income in the landlord's possession before the service of the notice.
- Can a landlord ask the tenant or third-party person (i.e. tenant's employer, a government agency, financial institution, or any other source) for financial information to either prove or disprove that the tenant is or is not a high-income tenant?
  - Absolutely not. In fact, it is expressly prohibited by the CTRA.

See Code of Civil Procedure 1179.02.5

# High Income Tenant Continued

- What happens if the Landlord has independent proof that a tenant is a high-income tenant?
  - The landlord must include verbatim state law language in their 15-Day notice which explains the tenant's additional obligation as a high-income tenant, and the need to submit additional documentation demonstrating a COVID-19 impact. (1179.02.5(b)(2)(B))
    - Failure to include this statement will result in tenant not having to comply with the additional documentation request.
  - The tenant has the duration of the 15-day notice of termination of tenancy to return the declaration and submit additional documentation to demonstrate a COVID-19 financial impact.
    - The additional documentation list is contained in state law. (1179.02.5(a)(2)(A)-(G)). But generally any form of objectively verifiable documentation that demonstrates the COVID-19 related impact is enough to satisfy this requirement, including a letter from an employer.
- What happens if the landlord claims that a tenant is a high-income tenant but does not have independent proof?
  - If the matter goes to a UD, the landlord must plead and prove as much. If the landlord cannot, then there is a unilateral attorney fees provision for the tenant.

See Code of Civil Procedure 1179.02.5

## Unlawful Detainers (“UD”)

- What happens if the tenant does not submit the Declaration?
  - The landlord may proceed with the filing of the UD.
- Is there anything the tenant can do?
  - Upon receiving the UD, the tenant may attach, as part of their Answer, the Declaration.
    - Once the court receives the declaration, the court must set a noticed hearing.
    - At the hearing the court must determine whether the failure to submit the documentation was a result of a mistake, inadvertence, surprise, or excusable neglect.
    - If the court finds one of the aforementioned bases, the court must do either of the following:
      - If the UD seeks debt only during the “protected” time period, the court must dismiss the case.
      - If the UD is filed before February 1, 2021, and seeks debt during the “transition” time period, the court must dismiss the case.
      - If the UD is filed after February 1, 2021, and seeks debt during the “transition” time period, the court must give the tenant five days to pay 25% of the rent, and if paid, then dismiss the case.

See Code of Civil Procedure 1179.03

# Summons and Complaint

- As it relates to Summons and Complaint:
  - These will not be issued prior to October 5, 2020, if any portion of the UD is related to rent.
  - Likewise, Default Judgments will not be issued prior to October 5, 2020, if any portion of default is based on rent.
  - Landlords must file supplemental cover sheet together with the Summons and Complaint. The cover sheet information is found in the Code of Civil Procedure 1179.01.5(c)(2).
  - Landlords may obtain a Summons and Complaint or seek a Default Judgment on other grounds besides nonpayment of rent.

See Code of Civil Procedure 1179.01.5

# Unlawful Detainer Records

- Will filing a UD during the protected time period hurt tenant's credit record?
  - Unlikely. UD's that are based on nonpayment of COVID-19 rent are restricted , except in very limited circumstances.
  - Exceptions can be found in Code of Civil Procedure 1161.2 and 1161.2.5, such as:
    - (A) To a party to the action, including a party's attorney.
    - (B) To a person who provides the clerk with the names of at least one plaintiff and one defendant.
    - (C) To a resident of the premises for which the COVID-19 rental debt is owed who provides the clerk with the name of one of the parties or the case number and shows proof of residency.
    - (D) To a person by order of the court, which may be granted ex parte, on a showing of good cause.
    - And others.
- Does the state law prohibit any other evictions?
  - Yes, substantial rehabilitation and demolition unless necessary to maintain compliance with applicable law governing the habitability of residential rental units..

See Code of Civil Procedure 1161.2; 1161.2.5; 1179.03.5(a)(3)(A)(ii)

## Small Claims Court and the “Small Landlord and Homeowner Relief Act”

- Beginning March 1, 2021, landlords may pursue COVID-19 related debt in Small Claims court. There are no limits to how much can be sought and how many different cases may be brought.
- What about Richmond’s grace period?
  - Richmond’s grace period began September 30, 2020, and ends September 30, 2021.
  - This means landlords cannot seek a COVID-19 related debt ,which was incurred during the period of the Richmond Order, in small claims until September 30, 2021.
- What about the 25% requirement? How does that work with the grace period?
  - That is separate and distinct requirement as it is a requirement under the CTRA. Richmond’s grace period will only protect tenants from immediate Small Claims action. To avail oneself to the protections of the CTRA, the 25% must be paid in accordance with the state law.

See Code of Civil Procedure 116.223 et seq.

# Anti-Retaliation: Civil Code 1942.5

- AB-3088 amended part of an existing anti-retaliatory statute.
- The law added a new section specifically in reference to COVID-19 rental debt.
- The new section states, "It is also unlawful for a lessor to bring an action for unlawful detainer based on a cause of action other than nonpayment of COVID-19 rental debt, as defined in Section 1179.02 of the Code of Civil Procedure, for the purpose of retaliating against the lessee because the lessee has a COVID-19 rental debt."
- Any lessor or agent of the lessor who violates this section shall be liable to the lessee in a civil action for:
  - Actual damages
  - Punitive damages (\$100 - \$2000 per retaliatory act)
  - Reasonable attorney's fees (for any prevailing party if requested)

See Civil Code 1942.5 et seq.

# Contra Costa County Urgency Ordinance 2020-26

- The City of Richmond did not renew the Richmond Moratorium on Evictions and thus, the Richmond Order expired as of September 30, 2020.
- The City Attorney's office has indicated that the County's Order will apply in the City of Richmond. The County's Ordinance does the following:
  - Prohibits no fault evictions
    - Except for Owner Move In evictions, for health or safety reasons, and Ellis Act (removal from the rental market) evictions.
  - Prohibits evictions where tenant allows an unauthorized occupant to live in the dwelling unit, if the occupant is a member of the tenant's immediate family living in the dwelling unit and the occupant moved in as a result of the COVID-19 pandemic.

See Contra Costa County Urgency Ordinance 2020-26



# Contra Costa County Urgency Ordinance 2020-26 Continued

According to the Richmond City Attorney's Office, the County's Ordinance:

- Prohibits rent increases on residential real property through January 31, 2021.
- Includes rent-controlled units in the City of Richmond.
- Except for the following:
  - Units that fall under Costa Hawkins
  - Units exempted from State law rent control
  - Rent increases where one or more scheduled rent increases occur pursuant to a written rental agreement that was entered into before March 16, 2020.
- Reminder: This is the Contra Costa County's Order, not the Rent Program's. Although the Rent Program may assist in answering general questions regarding the County's Ordinance, you may want to contact the County for more specific questions.

See Contra Costa County Urgency Ordinance 2020-26

# THANK YOU!

**Richmond Rent Program**

**510-234-RENT (7368)**

**[rent@ci.richmond.ca.us](mailto:rent@ci.richmond.ca.us)**

**Or**

**Visit us at:**

**[www.richmondrent.org](http://www.richmondrent.org)**

\*Our website has a COVID-19 Tenant Relief Act fact sheet in English and Spanish and links to the applicable forms mentioned during this presentation in various languages.