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WHAT RESIDENTIAL TENANTS NEED TO KNOW ABOUT PROTECTION FROM EVICTION

Disclaimer: *The following does not constitute, nor should it be construed to be, legal advice. You should contact a licensed attorney for such advice. The information provided is of a general nature, intended to help you preserve your rights and fulfill your obligations.*

Protections for residential tenants who are unable to pay rent due to the economic impact of the national state of emergency arise from three separate, very different sources. They are detailed below in order of least to most significant. Keep in mind that presently, no form of protection waives a tenant's obligation to eventually pay all rent that comes due during the emergency.

- 1) The first is through orders by Governor Newsom, of which there are two. His first on March 16th extended a very narrow protection under the state's anti-gouging law preventing ending a tenancy with the intention of re-renting the unit at more than 10% above the current rent. Normally that protection lasts just 30 days from the declaration of a state of emergency, but the order extended it to at least May 31st. A second part of that order empowered local governments to provide their own tenant protections; a subject which will be covered below.

The governor's second order on March 27th extended the time a tenant will have to file a response to a legal eviction action with the court. It does not prohibit a landlord from starting the eviction process, but merely extends the time a tenant has to respond following being served with a court eviction summons from 5 days to 60 days, if they are served that summons between now and May 31st. To have a right to assert this protection under this order a tenant must notify the landlord of their inability to pay some or all of the rent no later than 7 days after rent is due, which for most affected tenants will next be by May 7th.

- 2) The California Judicial Council has adopted emergency rules for all of the state's courts that largely prohibit all evictions from commencing until **90 days after the governor lifts the declaration of a state of emergency**. The rules provide exceptions for evictions necessary to protect health or safety, but such necessity must result from a court making a finding exercising its discretion, and doing so on the record.

This means that even if the courts, which are now effectively closed, figure out a way to start certain activities remotely, there will likely be essentially no evictions, for any typical basis, commenced until September (assuming, optimistically, the emergency lifts May 31st).

Also, no default judgments for eviction can be entered unless, again, it is justified by both a need to protect health or safety, and a tenant has failed to file a timely response in the time allowed, including that extended by the governor's second order mentioned above.

Any eviction case with a trial date already set must have the trial date continued by 60 days. For open cases where there has not yet been a request by the landlord for a trial date, the date set must be no sooner than 60 days following the request, instead of the usual requirement that it be within 20 days of the request. Again, the need to protect health or safety can justify less time.

The foregoing is considered of medium protection for those unable to pay due to economic impacts of the emergency, because, unlike the third type below, the Council's action does not actually prohibit eviction in the long run, but merely delays such actions; albeit, the delay may be substantial. However, for those who might be facing eviction for reasons other than qualifying non-payment, the Council's action will help assure they are not displaced during, or in the initial aftermath of, the state of emergency. Of course, all of the foregoing can be changed by a modification or repeal by the Judicial Council, so watch this space.

- 3) The governor's initial March 16th order empowered local city or county governments to provide, in conjunction with a declaration of a local state of emergency, eviction protections for residential or commercial tenants who are unable to pay rent due to the economic impact they have personally experienced because of the national emergency. These local governments have discretion to not only prohibit the start of the eviction process, such as prohibiting the service of a 3-Day Notice to Pay Rent or Quit, but to also provide longer term relief by requiring landlords to allow tenants time to come current on past due rent following the lifting of the state of emergency. Only after the expiration of that forbearance period, if any, would a landlord be permitted to bring an action for qualifying non-payment.

Because these local actions, such as they may exist, are at the discretion of the enacting government they can vary greatly. For this reason tenants should research what local action, if any, has been taken by the local government that has jurisdiction over the rental property they occupy. At this writing only 3 cities, out of 34 in Orange County, have taken an action allowed by the governor's order. The County of Orange also has not taken any action. Of course, the current situation is subject to change, so residents should contact their local elected officials or the jurisdiction's head administrator, such as a city manager, to inquire whether the jurisdiction has begun or intends to begin the process of implementing some protections for tenants unable to pay their rent due to income loss resulting from the national emergency.

It is recommended that tenants facing an inability to pay rent because of an emergency-related loss of income clearly communicate that fact to their landlord, preferably in writing. They should be prepared to produce documentary evidence that such a claim of income loss is in fact true. Depending on the nature of any local government protection, they may either need to show such evidence initially, within a specified period after seeking the protection, or at the time they seek to be protected during the forbearance period, if any, following the lifting of the state of emergency. They should consider seeking counseling from a knowledgeable source, such as our agency, to make sure they fully understand both their rights and obligations during this very difficult time.