



AB-3088 and Other State of Emergency Regulations Effecting Tenancies



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- ▶ This Video Is Specifically Designed For Solano County Evictions and Tenancies. Your City and or County May Have other Restrictions that are applicable or not applicable. Consult with Legal Counsel of Your Choosing.
- ▶ The Information in this presentation is designed to be up to date as of September 5, 2020. However, with hastily drafted legislation, understandings of any statute and or regulations may change over time. We will as best as possible try to update any materials and said understanding. In other words, do not treat this information as legal advice and consult with Counsel of your choice.
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The State of Landlord-Tenant Relationships

- ▶ The Landlord Tenant Space has Change Dramatically in 2020, particularly over the last 6 months.
- ▶ Matters that were once simple have now been made complex
- ▶ Overview of the new regulations that have been passed.
- ▶ Some Humor Before We Begin



New Restrictions That Will Effect Solano County Tenancies

- ▶ Centers of Disease Control (CDC) Order No. 2020-19653 Published September 4, 2020
- ▶ California AB-3088: The Tenant, Homeowner, and Small Landlord Relief and Stabilization Act



CDC Order No. 2020-19654

- ▶ Published in The Federal Register on September 4, 2020
- ▶ What The Order Does?
 - ▶ Bars a Landlord, Owner of Residential Property, or other person with a legal right to pursue an eviction or possessory action if certain conditions are met.
 - ▶ In Effect as of September 4, 2020 until at least December 31, 2020)
 - ▶ Note: “Person” includes any business entity or organization (i.e. Corporations, LLCs, Partnerships etc.)



CDC Order No. 2020-19654

- ▶ **What are the conditions needed to trigger this protection**
 - ▶ Tenant, Lessee or resident of a residential property provides their Landlord, Residential Property Owner, or other person with a legal right to pursue an eviction or possessory action a form declaration (sample of one by CDC provided) under penalty of Perjury, stating the following:
 - ▶ (1) The individual has used best efforts to obtain all available government assistance for rent or housing;
 - ▶ (2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
 - ▶ (3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
 - ▶ (4) the individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
 - ▶ (5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.



CDC Order No. 2020-19654 Exclusion of Evictions Not Related to Payment of Money

- ▶ What are the expressed eviction exclusions under the this order?
- ▶ Per the Order's own terms, Nothing in this Order precludes evictions based on a tenant, lessee, or resident:
 - ▶ (1) Engaging in criminal activity while on the premises;
 - ▶ (2) threatening the health or safety of other residents; 10
 - ▶ (3) damaging or posing an immediate and significant risk of damage to property;
 - ▶ (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
 - ▶ (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).



CDC Order No. 2020-19654 Non-Applicability of Order

- ▶ This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order.
- ▶ In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.
- ▶ Additionally, this Order shall not apply to American Samoa, which has reported no cases of COVID–19, until such time as cases are reported.



CDC Order No. 2020-19654 The Gray Area and Devil's Advocate Scenarios

- ▶ Question: Does this Order Apply in Solano County? We have AB-3088 and The County Emergency Ordinance, Don't These Items Control?
- ▶ Devil's Advocate Answer: CDC's Order Probably will Prevail over State and County Controls Why?



CDC Order No. 2020-19654 Why CDC's Order May Prevail Over State and Local Controls

- ▶ **Two Reasons Greater Protections in CDC's:**
 - ▶ The Criminal Penalties Contained In CDC's Order.
 - ▶ Once Tenant Declaration is Provided to Landlord, Creates an Absolute Bar on Eviction until at least December 31, 2020 versus state law provides certain exceptions to allow for evictions for rent that has accrued if tenant does not return declarations or pay a certain percentage of rent (Will Talk About This In AB-3088) Deal.



CDC Order No. 2020-19654 Criminal Penalties

- ▶ Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this Order may be subject to a fine of no more than \$100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than \$250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law. An organization violating this Order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death or as otherwise provided by law. The U.S. Department of Justice may initiate court proceedings as appropriate seeking imposition of these criminal penalties.



California AB-3088: New Restrictions That Changes Things Statewide

- ▶ Passed on August 31, 2020 in Response to the Judicial Council of California Lifting A Statewide Court Ban on Evictions
- ▶ Consist of a dozen changes, and additions to many eviction related statutes including AB-1482 Civil Codes 1946.2, 1947.12 and 1947.13, and Code of Civil Procedure Section 1161



California AB-3088: New Restrictions That Changes Things Statewide

- ▶ This Presentation Will Focus on Residential Evictions for Tenancies for Single Family Homes and Multi-family Properties.
- ▶ Protections were made for Mobile Homes and other housing, but will not be focused on in this Presentation
- ▶ Additional Videos to Follow for Protections for Homeowners and Changes to Small Claims Court and Collecting Unpaid Rent in Breach of Lease Cases Outside an Eviction



Changes to Code of Civil Procedure 1161, California's Eviction Law

- ▶ **Biggest Change In the Eviction Statute for Non-Payment of Rent and Defaults Based on Paying Money (Notices to Perform i.e. Paying Utilities etc.)**
- ▶ **All Cases Dealing With Rent or Money are Subject to The Tenant Protections Act of 2020 Until 2025**



So What is the COVID-19 Tenant Relief Act

- ▶ **New Section CCP 1179.01**
- ▶ **Restrictions Include:**
 - ▶ No Evictions Based on Non-Payment of Rent and other charges until at least October 5, 2020. Courts are prohibited from issuing any eviction summons, or entering a default and or default judgment on any case that involves non-payment of rent and or other charges.
 - ▶ The statute relates to any action that is in whole or in part on non-payment of rent or charges, meaning if you have multiple causes of action (legal reasons for a court to enter an eviction judgment) The court is barred from taking action on your eviction case until at least October 5, 2020



So What is the COVID-19 Tenant Relief Act

- ▶ **New Section CCP 1179.03.5. Courts Cannot Enter Eviction Judgments (cannot find a tenant guilty of unlawful detainer)[in Legalese] before February 1, 2021 unless the following Apply :**
- ▶ (1) The tenant was guilty of the unlawful detainer before March 1, 2020.
- ▶ (2) In response to service of a notice demanding payment of COVID-19 rental debt pursuant to subdivision (e) of Section 798.56 of the Civil Code or paragraph (2) or (3) of Section 1161, the tenant failed to comply with the requirements of Section 1179.03.
- ▶ (3)(A) The unlawful detainer arises because of a termination of tenancy for any of the following:
 - ▶ (i) An at-fault just cause, as defined in paragraph (1) of subdivision (b) of Section 1946.2 of the Civil Code.
 - ▶ (ii) (I) A no-fault just cause, as defined in paragraph (2) of subdivision (b) of Section 1946.2 of the Civil Code, other than intent to demolish or to substantially remodel the residential real property, as defined in subparagraph (D) of paragraph (2) of subdivision (b) of Section 1946.2.
- ▶ (II) Notwithstanding subclause (I), termination of a tenancy based on intent to demolish or to substantially remodel the residential real property shall be permitted if necessary to maintain compliance with the requirements of Section 1941.1 of the Civil Code, Section 17920.3 or 17920.10 of the Health and Safety Code, or any other applicable law governing the habitability of residential rental units.
- ▶ (iii) The owner of the property has entered into a contract for the sale of that property with a buyer who intends to occupy the property, and all the requirements of paragraph (8) of subdivision (e) of Section 1946.2 of the Civil Code have been satisfied.
- ▶ (B) In an action under this paragraph, other than an action to which paragraph (2) also applies, the landlord shall be precluded from recovering COVID-19 rental debt in connection with any award of damages.
- ▶ (b) (1) This section does not require a landlord to assist the tenant to relocate through the payment of relocation costs if the landlord would not otherwise be required to do so pursuant to Section 1946.2 of the Civil Code or any other law.
- ▶ (2) A landlord who is required to assist the tenant to relocate pursuant to Section 1946.2 of the Civil Code or any other law, may offset the tenant's COVID-19 rental debt against their obligation to assist the tenant to relocate.



So What is the COVID-19 Tenant Relief Act

- ▶ This New 1179.03.5 Section Appears to Be Targeting No-Fault Termination Notices (i.e 30/60/90 Day Notices Issued Between March 1, 2020 to Present; Tenants Holding Over on Expired Leases and Tenancies at Will that can be Terminated under Civil Code Section 789
- ▶ Why?: CCPI 179.03.5 only allows for at Fault or no fault termination for tenancies under 1946.2 without any exemptions like under 1946.2(e) including the “Single Family Residence” (SFR) exemption under 1946.2(e)(8) through January 31, 2021.
 - ▶ One Small Carve Out for Owners Selling their “Single Family Residence” to another buyer that intends to occupy the premises:
 - ▶ “(iii) The owner of the property has entered into a contract for the sale of that property with a buyer who intends to occupy the property, and all the requirements of paragraph (8) of subdivision (e) of Section 1946.2 of the Civil Code have been satisfied.”
 - ▶ This Means that The Owner of the SFR perfected their right to the SFR exemption by having in the SFR disclosure a part of the rental agreement.

This property is not subject to the rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12 (d)(5) and 1946.2 (e)(8) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.”



So What is the COVID-19 Tenant Relief Act

- ▶ **New Section CCP 1179.04**
- ▶ **Landlords Must Provide Tenants New CA Disclosure by September 30, 2020, if Tenant as if September 1, 2020 have not paid one or more rent payments that accrued between March 1, 2020 through August 31, 2020**
 - ▶ The Landlord Must Provide This Written Disclosure to all tenants and occupants by 9/30/2020 in a matter per CCP 1162 (Personal Service in person, substituted service or posting and mailing notice) OR by U.S. Mail
 - ▶ A Landlord Must give this disclosure or else the Landlord Cannot Serve a notice pursuant to 1179.03 (b) or (c). In other words a Landlord cannot serve and try to evict a tenant for a monetarily breach until after January 31, 2021 without complying with CCP 1179.04
 - ▶ This Disclosure Can be Made Concurrently with any “15 Day Notice to Pay Rent Under 1179.03 (see 1179.04(c)(2), We’ll get in to later on in the presentation)



So What is the COVID-19 Tenant Relief Act

- ▶ The Full Text of the Entire Disclosure is Pretty Extensive so Please Check Out the Supplemental Materials for the Full Text That Must be Disclosed.



So What is the COVID-19 Tenant Relief Act

- ▶ **New Section CCP 1179.03 The New 15 Day Notice and Other Disclosure Requirements**
- ▶ **Restrictions Include:**
 - ▶ For Any Rent That Became Due Between March 1, 2020 and January 31, 2021, Landlords must Comply Strictly with The Tenant Protection Act or else any eviction may be fatally defective subjecting Landlords to delays by courts dismissing their eviction case, Attorney's Fees and other penalties.



So What is the COVID-19 Tenant Relief Act

- ▶ **New Section CCP 1179.03 The New 15 Day Notice and Other Disclosure Requirements**
- ▶ **Two Sets of Requirements Based on When Rent Accrued**
 - ▶ For Rent that Accrued Between March 1, 2020 and August 31, 2020, Landlords Must Follow 1179.03(b) requirements
 - ▶ For Rent that Accrues between September 1, 2020 and January 31, 2021, Landlords Must Follow 1179.03(c) requirements



The New Requirements for 3-Day Notices that Demand COVID-19 Rent Under CCP 1179.03(b) March 1-August 31 2020

- ▶ **The “3-Day Notice” Becomes a 15 Day Notice, excluding Weekends, and Holidays**
- ▶ **The notice shall set forth the amount of rent demanded and the date each amount became due.**
 - ▶ This is slightly different than the old CCP 1161(2) as under the old section, you could technically demand the total amount due without a breakdown of how the amounts accrued and due date, so long as the amount due was correct.
- ▶ The notice shall advise the tenant that the tenant will not be evicted for failure to comply with the notice, except as allowed by this chapter, if the tenant delivers a signed declaration of COVID-19-related financial distress to the landlord on or before the date the notice to pay rent or quit or notice to perform covenants or quit expires, by any of the methods specified in subdivision (f).
- ▶ **Tenant Must Be Provided a Verbatim Disclosure in 12-Point font (We’ll cover that after how the Tenant COVID-19 Disclosure Can be Delivered)**



The New Requirements for 3-Day Notices that Demand COVID-19 Rent Under CCP 1179.03(b) March 1-August 31 2020

- ▶ What Ways Must be Disclosed to Tenants about Delivering the COVID-19 Declaration listed in CCP 1179.3

- ▶ (f) A tenant may deliver the declaration of COVID-19-related financial distress to the landlord by any of the following methods:
 - ▶ (1) In person, if the landlord indicates in the notice an address at which the declaration may be delivered in person.
 - ▶ (2) By electronic transmission, if the landlord indicates an email address in the notice to which the declaration may be delivered.
 - ▶ (3) Through United States mail to the address indicated by the landlord in the notice. If the landlord does not provide an address pursuant to subparagraph (1), then it shall be conclusively presumed that upon the mailing of the declaration by the tenant to the address provided by the landlord, the declaration is deemed received by the landlord on the date posted, if the tenant can show proof of mailing to the address provided by the landlord.
 - ▶ (4) Through any of the same methods that the tenant can use to deliver the payment pursuant to the notice if delivery of the declaration by that method is possible.



The New Requirements for 3-Day Notices that Demand COVID-19 Rent Under CCP 1179.03(b) March 1-August 31 2020

- ▶ All New 15-Day COVID 19 Rent Notices Must Have Following Disclosure in at least size 12 font

“NOTICE FROM THE STATE OF CALIFORNIA: If you are unable to pay the amount demanded in this notice, and have decreased income or increased expenses due to COVID-19, your landlord will not be able to evict you for this missed payment if you sign and deliver the declaration form included with your notice to your landlord within 15 days, excluding Saturdays, Sundays, and other judicial holidays, but you will still owe this money to your landlord. If you do not sign and deliver the declaration within this time period, you may lose the eviction protections available to you. You must return this form to be protected. You should keep a copy or picture of the signed form for your records.

You will still owe this money to your landlord and can be sued for the money, but you cannot be evicted from your home if you comply with these requirements. You should keep careful track of what you have paid and any amount you still owe to protect your rights and avoid future disputes. Failure to respond to this notice may result in an unlawful detainer action (eviction) being filed against you.

For information about legal resources that may be available to you, visit lawhelpca.org.”



The New Requirements for 3-Day Notices that Demand COVID-19 Rent Under CCP 1179.03(c) March 1-August 31 2020

- ▶ **The “3-Day Notice” Becomes a 15 Day Notice, excluding Weekends, and Holidays**
- ▶ **The notice shall set forth the amount of rent demanded and the date each amount became due.**
 - ▶ This is slightly different than the old CCP 1161(2) as under the old section, you could technically demand the total amount due without a breakdown of how the amounts accrued and due date, so long as the amount due was correct.
- ▶ The notice shall advise the tenant that the tenant will not be evicted for failure to comply with the notice, except as allowed by this chapter, if the tenant delivers a signed declaration of COVID-19-related financial distress to the landlord on or before the date the notice to pay rent or quit or notice to perform covenants or quit expires, by any of the methods specified in subdivision (f).
- ▶ Tenant Must Be Provided a Verbatim Disclosure in 12-Point font
- ▶ High Income Tenants Must Be Provided a Verbatim Disclosure in 12-Point Font (We'll Address in the Slides)



The New Requirements for 3-Day Notices that Demand COVID-19 Rent Under CCP 1179.03(c) September 1, 2020-January 31 2021 Disclosure

“NOTICE FROM THE STATE OF CALIFORNIA: If you are unable to pay the amount demanded in this notice, and have decreased income or increased expenses due to COVID-19, you may sign and deliver the declaration form included with your notice to your landlord within 15 days, excluding Saturdays, Sundays, and other judicial holidays, and your landlord will not be able to evict you for this missed payment so long as you make the minimum payment (see below). You will still owe this money to your landlord. You should keep a copy or picture of the signed form for your records.

If you provide the declaration form to your landlord as described above AND, on or before January 31, 2021, you pay an amount that equals at least 25 percent of each rental payment that came due or will come due during the period between September 1, 2020, and January 31, 2021, that you were unable to pay as a result of decreased income or increased expenses due to COVID-19, your landlord cannot evict you. Your landlord may require you to submit a new declaration form for each rental payment that you do not pay that comes due between September 1, 2020, and January 31, 2021.

For example, if you provided a declaration form to your landlord regarding your decreased income or increased expenses due to COVID-19 that prevented you from making your rental payment in September and October of 2020, your landlord could not evict you if, on or before January 31, 2021, you made a payment equal to 25 percent of September’s and October’s rental payment (i.e., half a month’s rent). If you were unable to pay any of the rental payments that came due between September 1, 2020, and January 31, 2021, and you provided your landlord with the declarations in response to each 15-day notice your landlord sent to you during that time period, your landlord could not evict you if, on or before January 31, 2021, you paid your landlord an amount equal to 25 percent of all the rental payments due from September through January (i.e., one and a quarter month’s rent).

You will still owe the full amount of the rent to your landlord, but you cannot be evicted from your home if you comply with these requirements. You should keep careful track of what you have paid and any amount you still owe to protect your rights and avoid future disputes. Failure to respond to this notice may result in an unlawful detainer action (eviction) being filed against you.

For information about legal resources that may be available to you, visit lawhelpca.org.”



For Both 15 Day Notices Under CCP 1179.03 (b) and (c) You Must Provide Tenants a Declaration Form To Declare They Need Eviction Protections.

▶ The Declaration Required Is Prescribed in CCP 1179.02

- ▶ (d) "Declaration of COVID-19-related financial distress" means the following written statement:
- ▶ 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:**

- ▶ If a Tenant or anyone in their household (legal occupant) has provided this declaration within said 15 day time period, this will stop the Eviction Clock from running, there are two outcomes that will happen depending upon if you sent a notice per 1179.03(b) or 1179.03(c)



For Both 15 Day Notices Under CCP 1179.03 (b) and (c) You
What Happens if a Tenant Returns a Declaration Form To You
That Declare They Need Eviction Protections.

- ▶ **For 1179.03 (b) Notices, i.e rent accrued from March 1, 2020 thru August 31, 2020, Tenants Get Protections of 1179.03(g)**
 - ▶ (g) Except as provided in Section 1179.02.5, the following shall apply to a tenant who, within 15 days of service of the notice specified in subdivision (b) or (c), excluding Saturdays, Sundays, and other judicial holidays, demanding payment of COVID-19 rental debt delivers a declaration of COVID-19-related financial distress to the landlord by any of the methods provided in subdivision (f):
 - ▶ (1) With respect to a notice served pursuant to subdivision (b), the tenant shall not then or thereafter be deemed to be in default with regard to that COVID-19 rental debt for purposes of subdivision (e) of Section 798.56 of the Civil Code or paragraphs (2) and (3) of Section 1161.
 - ▶ In English, that means, You cannot evict a tenant for rent due Under a 1179.03(b) notice. It appears to me that you just lose the right to evict for a tenant for any rent accrued during this period (But you can collect on this rent in another Civil Action, like small claims court etc.)
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For Both 15 Day Notices Under CCP 1179.03 (b) and (c) You
What Happens if a Tenant Returns a Declaration Form To You
That Declare They Need Eviction Protections.

▶ **What About “High Income Tenants” That Send A Hardship Declaration**

- ▶ Who is a High Income Tenant
 - ▶ Per 1179.02.5 (1)(a) “High-income tenant” means a tenant with an annual household income of 130 percent of the median income, 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.
 - ▶ (B) For purposes of this paragraph, all lawful occupants of the residential rental unit, including minor children,
 - ▶ shall be considered in determining household size.
 - ▶ (C) “High-income tenant” shall not include a tenant with a household income of less than one hundred thousand dollars (\$100,000).



For Both 15 Day Notices Under CCP 1179.03 (b) and (c) You What Happens if a Tenant Returns a Declaration Form To You That Declare They Need Eviction Protections.

▶ **What Landlords Have to Do for High Income Tenants Termination Notices Under CCP 1179.03(b) and (c)**

- ▶ **STEP ONE** Check to Determine High Income Tenant Household Makes Over \$100,000.00 **AND** has an income over 130 percent of the Median Income 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.

- ▶ It appears that you must have this documentation on file (Rental Application with Income Items etc. Per 1179.03(d) only makes Tenants provide verification if landlord took documentation of a tenant's income. Other landlords that don't do tenant screening lose out on this protection.

- ▶ **STEP TWO:** In Addition to determining a tenant's income, you must provide the following disclosure in your termination notice in 12-point font as follows:

"Proof of income on file with your landlord indicates that your household makes at least 130 percent of the median income for the county where the rental property is located, as published by the Department of Housing and Community Development in the Official State Income Limits for 2020. As a result, if you claim that you are unable to pay the amount demanded by this notice because you have suffered COVID-19-related financial distress, you are required to submit to your landlord documentation supporting your claim together with the completed declaration of COVID-19-related financial distress provided with this notice. If you fail to submit this documentation together with your declaration of COVID-19-related financial distress, and you do not either pay the amount demanded in this notice or deliver possession of the premises back to your landlord as required by this 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."



For Both 15 Day Notices Under CCP 1179.03 (b) and (c) You
What Happens if a Tenant Returns a Declaration Form To You
That Declare They Need Eviction Protections.

- ▶ **If Landlords Comply with These requirements Under CCP 1179.03 requires a Tenant to submit to the landlord in addition to the declaration mentioned, documentation of their hardship:**
 - ▶ (c) A landlord may require a high-income tenant that is served a notice pursuant to subdivision (b) or (c) of Section 1179.03 to submit, in addition to and together with a declaration of COVID-19-related financial distress, documentation supporting the claim that the tenant has suffered 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, as defined in subparagraphs (A) to (G), inclusive, of paragraph (2) of subdivision (a), a letter from an employer, or an unemployment insurance record.
-



For Both 15 Day Notices Under CCP 1179.03 (b) and (c) You What Happens if a Tenant Returns a Declaration Form To You That Declare They Need Eviction Protections.

- ▶ **Items to document hardship includes:**
 - ▶ subparagraphs (A) to (G), inclusive, of paragraph (2) of subdivision (a), which are:
 - (A) A tax return.
 - ▶ (B) A W-2.
 - ▶ (C) A written statement from a tenant's employer that specifies the tenant's income.
 - ▶ (D) Pay stubs.
 - ▶ (E) Documentation showing regular distributions from a trust, annuity, 401k, pension, or other financial instrument.
 - ▶ (F) Documentation of court-ordered payments, including, but not limited to, spousal support or child support.
 - ▶ (G) 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.
 - ▶ **Tenants May also use a letter from an employer, or an unemployment insurance record.**
-



For Both 15 Day Notices Under CCP 1179.03 (b) and (c) You
What Happens if a Tenant Returns a Declaration Form To You
That Declare They Need Eviction Protections.

- ▶ **If A High Income Tenant Provides The Declaration Plus, Documentation to the Landlord, The Tenant Gets Eviction Protections**
- ▶ High Income Tenants That Do Not Comply with These Requirements Don't get Eviction Protection.
- ▶ Landlords Note: Per 1179.03
- ▶ (f) (1) A landlord shall be required to plead compliance with this section in any unlawful detainer action based upon a notice that alleges that the tenant is a high-income tenant. If that allegation is contested, the landlord shall be required to submit to the court the proof of income upon which the landlord relied at the trial or other hearing, and the tenant shall be entitled to submit rebuttal evidence.
- ▶ (2) If the court in an unlawful detainer action based upon a notice that alleges that the tenant is a high-income tenant determines that at the time the notice was served the landlord did not have proof of income establishing that the tenant is a high-income tenant, the court shall award attorney's fees to the prevailing tenant.
- ▶ **NO FUNNY BUSINESS LANDLORDS, IF YOU DON'T HAVE DOCUMENTATION OF A HIGH INCOME TENANT DO NOT DECLARE A TENANT A HIGH INCOME TENANT!**



For Both 15 Day Notices Under CCP 1179.03 (b) and (c) You
What Happens if a Tenant Returns a Declaration Form To You
That Declare They Need Eviction Protections.

- ▶ Review of CCP 1179.03(c) Cases where rent accrues from September 1, 2020 thru January 31, 2020. It's a similar procedure like 1179.03(b) notices but with additional protections.



The New Requirements for 3-Day Notices that Demand COVID-19 Rent Under CCP 1179.03(C) September 1-January 31 2021

- ▶ **The “3-Day Notice” Becomes a 15 Day Notice, excluding Weekends, and Holidays**
- ▶ **The notice shall set forth the amount of rent demanded and the date each amount became due.**
 - ▶ This is slightly different than the old CCP 1161(2) as under the old section, you could technically demand the total amount due without a breakdown of how the amounts accrued and due date, so long as the amount due was correct.
- ▶ The notice shall advise the tenant that the tenant will not be evicted for failure to comply with the notice, except as allowed by this chapter, if the tenant delivers a signed declaration of COVID-19-related financial distress to the landlord on or before the date the notice to pay rent or quit or notice to perform covenants or quit expires, by any of the methods specified in subdivision (f).
- ▶ **Tenant Must Be Provided a Verbatim Disclosure in 12-Point font (We’ll cover that after how the Tenant COVID-19 Disclosure Can be Delivered**
- ▶ **High Income Tenants Disclosure addressed earlier must be in the notice.**



For Both 15 Day Notices Under CCP 1179.03 (b) and (c) “High Income Tenants”

▶ The Declaration Required Is Prescribed in CCP 1179.02

- ▶ (d) “Declaration of COVID-19-related financial distress” means the following written statement:
 - ▶ 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:**

 - ▶ If a Tenant or anyone in their household (legal occupant) has provided this declaration within said 15 day time period
-



Eviction Protections.

- ▶ **For 1179.03 (c) Notices, i.e rent accrued from September 1, 2020 thru January 31, 2020, Tenants Get Protections of 1179.03(g)**
- ▶ No Eviction Before February 1, 2021
- ▶ A tenant shall not be guilty of unlawful detainer, now or in the future, based upon nonpayment of COVID-19 rental debt that came due during the transition period if, on or before January 31, 2021, the tenant tenders one or more payments that, when taken together, are of an amount equal to or not less than 25 percent of each transition period rental payment demanded in one or more notices served pursuant to subsection (c) and for which the tenant complied with this subdivision by timely delivering a declaration of COVID-19-related financial distress to the landlord.
- ▶ In English this means that so long as a tenant pays 25% of the rent that is demanded or that is due, you cannot evict a tenant for rent accruing from September 1, 2020 thru January 31, 2021.
- ▶ Landlords could go after Tenants in Civil Court for the balance but they cannot evict a tenant on the amount due.



You Forgot to Give Your Landlord the Hardship Declaration within 15 Days, No Worries You Get another Chance, well Maybe

▶ **Tenants Can Stop (or at least delay) Evictions with Declarations Filed in The Eviction Action**

- ▶ Per 1179.03 (h) (1) (A) Within the time prescribed in Section 1167, a tenant shall be permitted to file a signed declaration of COVID-19-related financial distress with the court.
- ▶ (B) If the tenant files a signed declaration of COVID-19-related financial distress with the court pursuant to this subdivision, the court shall dismiss the case, pursuant to paragraph (2), if the court finds, after a noticed hearing on the matter, that the tenant's failure to return a declaration of COVID-19-related financial distress within the time required by subdivision (g) was the result of mistake, inadvertence, surprise, or excusable neglect, as those terms have been interpreted under subdivision (b) of Section 473.
- ▶ (C) The noticed hearing required by this paragraph shall be held with not less than five days' notice and not more than 10 days' notice, to be given by the court, and may be held separately or in conjunction with any regularly noticed hearing in the case, other than a trial.
- ▶ In English this Means a Tenant can file a hardship declaration as a "response" or Answer to a landlord's eviction complaint. A tenant will need to justify any delay in giving this to a landlord with a court hearing held within 10 days of the filing of the declaration.



Court Hearing on Tenant Hardship Declaration

▶ Some Good for Landlords if Hearing Ends up Bad for Landlord

Per 1179.03 (2) If the court dismisses the case pursuant to paragraph (1), that dismissal shall be without prejudice as follows:

(A) If the case was based in whole or in part upon a notice served pursuant to subdivision (b), the court shall dismiss any cause of action based on the notice served pursuant to subdivision (b).

(B) Before February 1, 2021, if the case is based in whole or in part on a notice served pursuant to subdivision (c), the court shall dismiss any cause of action based on the notice served pursuant to subdivision (c).

(C) On or after February 1, 2021, if the case is based in whole or in part on a notice served pursuant to subdivision (c), the court shall dismiss any cause of action based upon the notice served pursuant to subdivision (c) if the tenant, within five days of the court's order to do so, makes the payment required by subparagraph (B) of paragraph (1) of subdivision (g), provided that if the fifth day falls on a Saturday, Sunday, or judicial holiday the last day to pay shall be extended to the next court day.

(3) If the court dismisses the case pursuant to this subdivision, the tenant shall not be considered the prevailing party for purposes of Section 1032, any attorney's fee provision appearing in contract or statute, or any other law.

(i) Notwithstanding any other law, a notice which is served pursuant to subdivision (b) or (c) that complies with the requirements of this chapter and subdivision (e) of Section 798.56 of the Civil Code or paragraphs (2) and (3) of Section 1161, as applicable, need not include specific language required by any ordinance, resolution, regulation, or administrative action adopted by a city, county, or city and county.



More Videos To Come As to Any Effects of Local Ordinances with These New Laws and Orders

- ▶ Per 1179.5 no new ordinance, resolution etc from August 19, 2020 thru January 31, 2021 can take effect before February 1, 2021
- ▶ Any existing ordinance, resolution 1179.5 only appears to regulate a local municipality's ability to regulate when tenants have to pay back rent but not restricting a municipality's ability to limit or freeze evictions
- ▶ Solano Emergency Resolution 2020-67: In Effect Until 90 days after State of Emergency is Over
 - ▶ Unclear as to Definition of State of Emergency Order
 - ▶ One Could Argue it from when Gov. Newsom Issued Order N-71-20 which expires September 30, 2020; hence the 90 days Runs from that date.
 - ▶ One could also argue its from when the State of Emergency due to COVID-19 is lifted.
- ▶ In a Nutshell, it appears that Solano Resolution 2020-67 would still prohibit Evictions within Solano County for Non-Payment of rent at least through December 30, 2020 since the Ordinance bars evictions on rent that accrues during the COVID-19 state of emergency plus 90 days after said emergency.
- ▶ CCP 1179.5 does provide a "Tolling" provision for of the 1 year limitation of demanding rent under CCP 1161 for landlords that cannot serve a notice for non-payment of rent
 - ▶ Devil's Advocate: The Solano Ordinance Does not Prohibit you from Serving a termination notice to pay rent or quit, rather it makes you put a disclosure in any notice saying you cannot be evicted
 - ▶ Rob's Argument is, saying you cannot be evicted in your termination notice is a "ban" on doing an eviction and the CCP 1179.5 tolling should apply.





Any Questions?
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