

California Civil Code Section 1511

The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse; however, the parties may expressly require in a contract that the party relying on the provisions of this paragraph give written notice to the other party or parties, within a reasonable time after the occurrence of the event excusing performance, of an intention to claim an extension of time or of an intention to bring suit or of any other similar or related intent, provided the requirement of such notice is reasonable and just;
2. When it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or,
3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

[Enacted 1872, amended by Stats. 1965, Ch. 1730]

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-37-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS in a short period of time, COVID-19 has rapidly spread throughout California, necessitating stringent public health emergency orders as well as guidance from federal, state, and local public health officials; and

WHEREAS on March 16, 2020, I issued Executive Order N-28-20, suspending state law limitations on local jurisdictions that impose restrictions on evictions; and

WHEREAS on March 19, 2020, I issued Executive Order N-33-20, ordering all residents to immediately heed the Order of the State Public Health Officer for all residents, unless exempted, to stay home or at their place of residence; and

WHEREAS many Californians are experiencing or will experience substantial losses of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with their rent, and leaving them vulnerable to eviction; and

WHEREAS minimizing evictions during this period is critical to reducing the spread of COVID-19 in vulnerable populations by allowing all residents to stay home or at their place of residence in compliance with Executive Order N-33-20; and

WHEREAS Chief Justice Tani Cantil-Sakauye issued advisory guidance on March 20, 2020 for superior courts to suspend most civil trials and hearings for at least 60 days, and on March 23, 2020, suspended all jury trials for a period of 60 days, and extended by 60 days the time period for the holding of a civil trial; and

WHEREAS on March 25, 2020 the Department of Business Oversight secured support from national banks, state banks and credit unions for temporary delays in mortgage payments and foreclosure sales and evictions for homeowners who have economic impacts from COVID-19 with the objective of maximizing consistency and minimizing hurdles potentially faced by borrowers.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) The deadline specified in Code of Civil Procedure section 1167 shall be extended for a period of 60 days for any tenant who is served, while

this Order is in effect, with a complaint that seeks to evict the tenant from a residence or dwelling unit for nonpayment of rent and who satisfies all of the following requirements:

- a. Prior to the date of this Order, the tenant paid rent due to the landlord pursuant to an agreement.
 - b. The tenant notifies the landlord in writing before the rent is due, or within a reasonable period of time afterwards not to exceed 7 days, that the tenant needs to delay all or some payment of rent because of an inability to pay the full amount due to reasons related to COVID-19, including but not limited to the following:
 - (i) The tenant was unavailable to work because the tenant was sick with a suspected or confirmed case of COVID-19 or caring for a household or family member who was sick with a suspected or confirmed case of COVID-19;
 - (ii) The tenant experienced a lay-off, loss of hours, or other income reduction resulting from COVID-19, the state of emergency, or related government response; or
 - (iii) The tenant needed to miss work to care for a child whose school was closed in response to COVID-19.
 - c. The tenant retains verifiable documentation, such as termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters or statements from an employer or supervisor explaining the tenant's changed financial circumstances, to support the tenant's assertion of an inability to pay. This documentation may be provided to the landlord no later than the time upon payment of back-due rent.
- 2) No writ may be enforced while this Order is in effect to evict a tenant from a residence or dwelling unit for nonpayment of rent who satisfies the requirements of subparagraphs (a)-(c) of paragraph 1.
- 3) The protections in paragraphs 1 and 2 shall be in effect through May 31, 2020.

Nothing in this Order shall prevent a tenant who is able to pay all or some of the rent due from paying that rent in a timely manner or relieve a tenant of liability for unpaid rent.

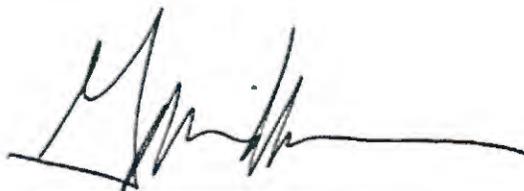
Nothing in this Order shall in any way restrict state or local governmental authority to order any quarantine, isolation, or other public health measure that may compel an individual to remain physically present in a particular residential property.

IT IS FURTHER ORDERED that this Order supersedes Executive Order N-28-20 to the extent that there is any conflict with that Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 27th day of March 2020.

A handwritten signature in black ink, appearing to read 'G. Newsom', written over a horizontal line.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

Sample letter to use for Governor's order

DATE: _____, 2020

Dear _____:

I am the tenant at _____, CA _____
Street, unit #, City Zip

I am giving you this notice no later than 7 days after rent for my unit was due. I am giving you this notice on behalf of myself and other occupants in the premises.

I will not be able to pay the rent due for this month and subsequent months as the situation continues, due to the COVID impact on my income because:

(check all that apply)

- I was unable to work or had my income reduced due to the COVID government response
- I need to care for someone who has or may have the COVID-19 virus
- I need to care for a child who is out of school due to the COVID government closure
- I have to care for myself, a relative or household member with an actual or suspected affliction

Please consider applying for the COVID Forbearance addendum to your loan which will permit you to postpone your mortgage payment on the condition that you do not evict us for nonpayment of rent during this pandemic. Your loan servicer can arrange that with you, particularly if they are backed by Fannie Mae or Freddie Mac. Please advise me if you have achieved that COVID Forbearance agreement.

Please also be advised that I claim protection under Civil Code §1511 in my inability to pay rent, both because of the COVID pandemic as an “irresistible, superhuman cause,” and due to government response ordering business closures and stay home orders. I believe that your attempting to evict me under these circumstances will be unsuccessful, and would constitute a malicious prosecution for which you could be liable in actual and punitive damages. We need to be cooperative, not confrontational.

For those who have lost their homes due to the COVID pandemic, I would like to have your consent to permit friends or relatives to live with me in the unit without additional rent, as my guests. If you object to that, I would like to have the reasons for your objection and your proposal as to what conditions you would require to permit that.

Sincerely,

Signature

Print Name

California Judicial Council Emergency rules of court affecting evictions

Emergency Rules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the California Rules of Court are adopted effective April 6, 2020, to read:

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Emergency rule 1. Unlawful detainers

(a) Application

Notwithstanding any other law, including Code of Civil Procedure sections 1166, 1167, 1169, and 1170.5, this rule applies to all actions for unlawful detainer.

(b) Issuance of summons

A court may not issue a summons on a complaint for unlawful detainer unless the court finds, in its discretion and on the record, that the action is necessary to protect public health and safety.

(c) Entry of default

A court may not enter a default or a default judgment for restitution in an unlawful detainer action for failure of defendant to appear unless the court finds both of the following:

(1) The action is necessary to protect public health and safety; and

(2) The defendant has not appeared in the action within the time provided by law, including by any applicable executive order.

(d) Time for trial

If a defendant has appeared in the action, the court may not set a trial date earlier than 60 days after a request for trial is made unless the court finds that an earlier trial date is necessary to protect public health and safety. Any trial set in an unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days from the initial date of trial.

(e) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

1 **Emergency rule 2. Judicial foreclosures—suspension of actions**

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3 Notwithstanding any other law, this rule applies to any action for foreclosure on a
4 mortgage or deed of trust brought under chapter 1, title 10, of part 2 of the Code of Civil
5 Procedure, beginning at section 725a, including any action for a deficiency judgment, and
6 provides that, until 90 days after the Governor declares that the state of emergency
7 related to the COVID-19 pandemic is lifted, or until this rule is amended or repealed by
8 the Judicial Council:

- 9
10 (1) All such actions are stayed, and the court may take no action and issue no
11 decisions or judgments unless the court finds that action is required to further the
12 public health and safety.
13
14 (2) Any statute of limitations for filing such an action is tolled.
15
16 (3) The period for electing or exercising any rights under that chapter, including
17 exercising any right of redemption from a foreclosure sale or petitioning the court
18 in relation to such a right, is extended.
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21 **Emergency rule 3. Use of technology for remote appearances**

22
23 **(a) Remote appearances**

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25 Notwithstanding any other law, in order to protect the health and safety of the public,
26 including court users, both in custody and out of custody defendants, witnesses, court
27 personnel, judicial officers, and others, courts must conduct judicial proceedings and
28 court operations as follows:

- 29
30 (1) Courts may require that judicial proceedings and court operations be
31 conducted remotely.
32
33 (2) In criminal proceedings, courts must receive the consent of the defendant to
34 conduct the proceeding remotely and otherwise comply with emergency rule
35 5. Notwithstanding Penal Code sections 865 and 977 or any other law, the
36 court may conduct any criminal proceeding remotely. As used in this rule,
37 “consent of the defendant” means that the consent of the defendant is
38 required only for the waiver of the defendant’s appearance as provided in
39 emergency rule 5. For good cause shown, the court may require any witness
40 to personally appear in a particular proceeding.
41
42 (3) Conducting proceedings remotely includes, but is not limited to, the use of
43 video, audio, and telephonic means for remote appearances; the electronic

Habitability Checklist

This list is a guide to help you identify all of the things that can affect habitability, based upon Civil Code §1941.1 and Health and Safety Code §17920.3. Due to the variety of circumstances which can arise in a given rental situation, all of the possible conditions can't be listed, so you should use your own judgment to determine whether a particular condition you are concerned with is like one of those listed here. Plainly stated, just because it's not on this list doesn't mean it isn't an uninhabitable one, particularly if it adversely affects living there.

Electrical

- ___ The power is unstable (goes out)
- ___ Wall switches
 - ___ some not working
 - ___ Cover plates missing/broken
- ___ Light fixtures not all working
 - ___ Exterior grounds lights
 - ___ For exterior doors
 - ___ For stairways
 - ___ For garage/parking
 - ___ For common walkways
- ___ Electrical outlets don't all work
 - ___ No shocks from any part
 - ___ GFI plugs near water
 - ___ kitchen sink
 - ___ bathroom sink
- ___ Fans
 - ___ ceiling [eg, bathroom]
 - ___ heater [eg, bathroom]
 - ___ above stove
 - ___ ceiling circulation fans
- ___ Smoke alarms don't work properly
- ___ Doorbell doesn't work
- ___ Security system doesn't work

Heating/Air Conditioning

- ___ Furnace
 - ___ Missing or broken
 - ___ Does not work
 - ___ Thermostat broken
 - ___ Inadequate heat
 - ___ Pilot goes out
 - ___ Produces odor
 - ___ Noisy during operation
 - ___ Some rooms get no heat
 - ___ Ducts are broken
 - ___ Asbestos in ducts
 - ___ Air filters failed
 - ___ Vents don't work
- ___ Other heaters
 - ___ heat lamps don't work
 - ___ wall heaters don't work
 - ___ portable units don't work
- ___ Air Conditioning
 - ___ Units don't work
 - ___ Inadequately cooling
 - ___ Noisy
 - ___ Thermostats don't work

Plumbing

- ___ Hot and cold water supplied
 - ___ Insufficient hot water
 - ___ Inadequate water pressure
 - ___ hot only
 - ___ both
 - ___ faucets
 - ___ Bathroom
 - ___ Kitchen
 - ___ Patio
 - ___ Wet bar
 - ___ washing machines
 - ___ Sudden bursts
 - ___ pressure varies a lot
- ___ Dirty/unhealthy water
 - ___ rust/discoloration
 - ___ Odors
 - ___ bad taste [eg, sewage]
- ___ Inadequate drainage
 - ___ Backups into sink/tub
 - ___ Slow drainage
 - ___ Regularly a problem
 - ___ in shower/bathtub
 - ___ Kitchen sinks
 - ___ Bathroom sinks
- ___ Toilets
 - ___ Slow fill and flush
 - ___ Sewage backups/overflows
 - ___ Flushing mechanism broken
 - ___ Leaks
 - ___ From water line to wall
 - ___ from the base on the floor
 - ___ from the fixture itself
- ___ Garbage disposal
 - ___ Doesn't work
 - ___ Backs up
- ___ Bathtub drain doesn't work
- ___ Sink stoppers don't work
- ___ Faucets on sinks and tub
 - ___ loose or broken
 - ___ hard to move
 - ___ Drip/trickle
- ___ Other Leaky plumbing
 - ___ Faucets leak
 - ___ when used
 - ___ always
 - ___ Onto or under counter
 - ___ Drains under sink
 - ___ Dishwasher
 - ___ Garbage disposal
 - ___ Clothes washer
 - ___ Hoses -hot and cold intake

- ___ Drainage hose
- ___ Washing Machine itself
- ___ Broken pipes in ceiling, wall
- ___ Sewer/Septic system
 - ___ don't work
 - ___ Inadequately maintained
 - ___ Surface discharge, leaks
 - ___ odor
 - ___ discharge under building
- ___ Kitchen sink counter
 - ___ tiled
 - ___ nonporous and cleanable
- ___ Exterior faucets
 - ___ don't work/leak
- ___ Swimming pool/jacuzzi
 - ___ don't work
 - ___ leaks
 - ___ pump/filter broken
 - ___ will not heat

Flooring

- ___ Uncovered holes in floors
- ___ Floor separating from wall
- ___ Weak or loose floorboards
- ___ Buckling or uneven floors
- ___ Loose/chipped/missing tiles
- ___ Loose/torn/missing linoleum
- ___ Torn or loose carpeting
- ___ Nails sticking up through carpet
- ___ Exposed carpet tack strips
- ___ Carpeting mildewed or moldy
- ___ Carpeting stinks/unsanitary
- ___ Carpet torn/frayed, trip hazard

Windows

- ___ Inadequate number of windows
- ___ Inadequate ventilation from windows
- ___ cracks or broken glass
- ___ gaps in panes or windows
- ___ Inadequate weather sealing
- ___ Windows that should open
 - ___ Don't open easily
 - ___ stick
 - ___ Don't stay open as needed
 - ___ Don't close completely
 - ___ Don't latch
- ___ Ground floor windows have no lock
- ___ Window screens [local ordinance]
 - ___ Holes or tears
 - ___ Missing from some/all
 - ___ Frames unbent, unbroken

Doors

- ___ Interior doors
 - ___ Loose in frame/maladjusted stick
 - ___ Will not close securely
 - ___ Missing knobs
 - ___ Missing working latches
- ___ Exterior doors
 - ___ Loose in frame/maladjusted stick
 - ___ Will not close securely
 - ___ Missing knobs
 - ___ Missing working latches
 - ___ Missing working deadbolts
 - ___ Inadequate weather stripping
 - ___ Key does not work well
 - ___ Threshold is broken
 - ___ Broken glass
- ___ Sliding glass doors
 - ___ stick
 - ___ Do not completely close
 - ___ will not lock securely
 - ___ tears or holes in screen
 - ___ Screen door loose in track
 - ___ Screen door will not latch
 - ___ Cracks or broken glass
- ___ Other exterior screen doors
 - ___ Improperly mounted
 - ___ Will not close fully
 - ___ Will not latch/lock
 - ___ Frame bent/broken
 - ___ Holes /tears in screen
 - ___ Does not close properly
 - ___ Cannot be secured open

Structure

- ___ Ceiling
 - ___ falling sown
 - ___ holes, flaking, looseness
 - ___ leaks, stains from leaks
 - ___ collapsing or soft
 - ___ damp
 - ___ leaks during rains
 - ___ leaks regularly
 - ___ weak, damp or soft spots
- ___ Walls
 - ___ Weak/loose/unconnected
 - ___ holes or gaps
 - ___ to outside
 - ___ missing wall surface
 - ___ at connection to floor/ceiling
 - ___ weak, damp or soft spots
 - ___ inadequate insulation
 - ___ permits water from outside
 - ___ Exterior walls not sealed
- ___ Shower area waterproofed
- ___ Basement
 - ___ floods
 - ___ inadequately sealed

- ___ unstable basement walls
- ___ Stairways/ rails
 - ___ insecure, unsafe
 - ___ dilapidated, failing
- ___ Exterior porch/deck unstable
- ___ Paint
 - ___ flaking or peeling
 - ___ lead-based

Appliances (supplied with unit)

- ___ Appliances don't all work
 - ___ Stove
 - ___ Refrigerator
 - ___ Dishwasher
 - ___ Clothes washer/dryer
 - ___ Air conditioner
 - ___ Garbage Disposal
 - ___ Trash compactor

Common Areas

- ___ Entryway doesn't work
- ___ Security gate doesn't work
- ___ Swimming pool
 - ___ doesn't work
 - ___ has stagnant/unhealthy water
 - ___ slippery pool deck
 - ___ No fence around pool
 - ___ Missing safety devices
 - ___ inadequately lit
- ___ Elevator
 - ___ doesn't work
 - ___ works sporadically
 - ___ does not function properly
- ___ Exterior lighting inadequate
 - ___ walkways/hallways
 - ___ stairwells
 - ___ parking areas
 - ___ outside of units
 - ___ Entrance to building
- ___ Intercom system doesn't work
- ___ Walkways have trip hazards
- ___ laundry room
 - ___ machines don't work
 - ___ inadequately lit
 - ___ filthy with debris and trash
- ___ Inadequate trash bins/pickup
- ___ Trash/debris/junk around grounds

Nuisances

- ___ Infestations
 - ___ mice/ rats/ rodents
 - ___ cockroaches
 - ___ ants
 - ___ spiders
 - ___ termites
 - ___ bees/ wasps/ hornets
 - ___ flies/mosquitos
 - ___ pigeons/bats
 - ___ Raccoons/opposums
- ___ Mold, mildew, mushrooms
- ___ Unsanitary water supply
- ___ raw sewage on exterior ground
- ___ Noxious fumes from sewer
- ___ Toxic/noxious fumes
 - ___ smoke from neighbors in building
 - ___ chemicals, paints, neighbors
- ___ Drug trafficking on the premises
- ___ Gang activity on the premises
- ___ Criminal acts by other tenants
 - ___ Assault /molestation
 - ___ violent crimes
 - ___ prostitution in the building
- ___ Noise
 - ___ construction in the building
 - ___ other tenants in the building
 - ___ noisy functioning of building
- ___ Blocking entry and exit
 - ___ of vehicles
 - ___ of pedestrian traffic

NOTES

Habitability Evidence

#	Problem	Location	Began	Ended	Notice	Result	Evidence
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

For each of the above items [use another copy of this if more than 10], describe in real terms how it affects living there, Give an approximate percentage reduction in rental value that you lost due to this condition during that time [1% to 50%].

1. _____ %
2. _____ %
3. _____ %
4. _____ %
5. _____ %
6. _____ %
7. _____ %
8. _____ %
9. _____ %
10. _____ %