

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tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.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]

TENANT RELIEF ACT OF 2020

On September 1, 2020, California's government created the Tenant Relief Act of 2020 as part of the widely publicized "AB 3088". It essentially protects tenants from eviction for nonpayment of any money between 3/1/20 and 1/31/21. It does not stop other kinds of evictions unless they are an attempt to circumvent these protections. It postpones filing a new eviction or default to 10/5/20.

By September 30, 2020, your landlord must give you a special Announcement informing you of this new law, and your general rights. If you receive a new Unlawful Detainer complaint before October 5, 2020, such as with a cover letter, contact us immediately.

Money due March to September, 2020 is now to be handled by Small Claims Court, not eviction. Money due for September through January, 2021 only requires a 25% lump sum payment by January 31, 2021, not before, which avoids eviction, as well. If the amount demanded also includes pre-COVID money, it is wrapped up in this process as well. All you need to do is follow the plan.

For each of these time periods, there is a special Notice to pay the money within 21 days [15 business days], NOT the normal 3-day notice. That Notice is accompanied by a blank Declaration. The Declaration is for you to sign and return to the landlord by means described [mail, email, fax, etc] before that Notice expires. If there are two notices, one for rent up to August and one for after August, you sign and return both declarations.

The Declaration says that you are "unable" to pay the rent due to the COVID impact on you, due to decreased income, having to care for someone, or increased expenses. If you have some money, also needed for food, utilities, gas, insurance, medications, etc., you are "unable" if paying the rent would sacrifice these other necessities. All you are really doing is postponing payment and avoiding eviction. The law says that you still owe the money, but Civil Code 1511 "excuses" your nonpayment entirely.

No proof is required unless you are a "high income" tenant [130% above average]; a letter from your employer is sufficient. You don't need to make any payment with that declaration, nor provide any information to show you are unable. If your finances were negatively affected directly or indirectly, that seems to be enough. The landlord CAN require a new Declaration from you for each month. Even if you forgot to submit your Declaration, you can do that if an eviction case starts when you file your first papers, and the judge will dismiss the case. If you forgot to pay the 25%, the judge can also let you pay that and then dismiss the case. If you do these things, you are not in "default" for not paying.

An eviction case for nonpayment of any money which was filed before 9/1/20 must now be dismissed. New Code of Civil Procedure §1179.03(a)(1), which says "A notice which does not meet the requirements of this section, regardless of when the notice was issued, shall not be sufficient to establish a cause of action for unlawful detainer or a basis for default judgment." The Announcement, special Notices, Declaration, special filing forms and other technicalities of this new law have to be satisfied for all of those cases.

The local COVID eviction ordinances are mostly overcome by this new law, where changes made extending the time to pay are altered, and later repayment deadlines are advanced to March, 2021.

Anticipating landlord dirty tricks, the law specially protects the tenant by amending Civil Code §1942.5(d) to include as "retaliation" a landlord's non-payment eviction case to punish the tenant for invoking these rights, such as a fake reason for eviction. It also supersedes any agreement after 9/1/20 for repayment. Attempted lockouts [changing locks, cutting utilities, removing property, etc] are additionally punished by the landlord owing another \$1000-\$2500 to the tenant in addition to the money already due for the lockout effect.

This is a simple description, omitting many details, simply to explain the basic function. Please set up a consultation to discuss how your particular circumstances apply. Please share this with your friends, relatives and neighbors and visit caltenantlaw.com for further valuable information.

Trump National Eviction Moratorium

Effective September 4, 2020 through December 31, 2020, the Centers for Disease Control issued an eviction moratorium only for nonpayment of rent cases in order to prevent spread of COVID-19. It is not explained why evictions for all other reasons are permitted, if the reason is as stated. It does not apply to States or Cities that provide better protection. The Tenant Relief Act may be better protection.

In vague language, the Order states that a landlord may not “evict” a residential tenant for nonpayment of rent until 2021, **if** each listed adult tenant submits the specified **Declaration**. The Declaration says that you are unable to pay the full rent due to COVID, having made best efforts to “all available government assistance for rent” and having made “best efforts to make timely partial payments that are as close to the full payment as the individuals’s circumstances may permit, taking into account other nondiscretionary expenses”. It says that if evicted you would become homeless, or need to move in with others. Curiously, it also says that you must still pay the rent and comply with other conditions of the tenancy, and that starting 2021 the landlord may require full payment.

It does not say what exactly is halted, whether an eviction notice, filing an eviction case, continuing an eviction case, or doing the actual lockout. It does provide that the US Department of Justice or local law enforcement may prosecute the landlord for a violation of this law, by imposition of up to a year in jail and \$100,000 fine for an individual [\$200,000 for an organization] per violation, and double the fines if the eviction results in death. There is no penalty for using a fake reason to evict in order to circumvent this law, such as a simple 30-day notice or false claim of subleasing.

The Declaration is the next page of this, and can be used to prevent an eviction from starting, or to stop a pending eviction for even pre-COVID nonpayment of rent. It should be accompanied by a written demand for dismissal of the pending eviction, and sent to the landlord’s lawyer and the landlord, with a copy also sent to the Department of Justice at the address shown at the bottom of the form if the landlord does not drop the case, accompanied by a description of the eviction and your demand for dismissal. We can assist you in the presentation of that package.

For further help, please set up a consultation with a lawyer at caltenantlaw.com. Please share this with your friends, relatives and neighbors, so that they will better understand their rights.

**DECLARATION UNDER PENALTY OF PERJURY
FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S
TEMPORARY HALT IN EVICTIONS
TO PREVENT FURTHER SPREAD OF COVID-19**

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

I have used best efforts to obtain all available government assistance for rent or housing.

I either expect 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), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses;

I am 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;

If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options. I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.

I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant

Date

Address