Federal, California, and Los Angeles Region Moratoriums on Evictions, Rent Increases, and Mortgage Foreclosures

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This client alert provides an overview of the eviction, mortgage foreclosure, and rent increase moratoriums in the State of California, the City and County of Los Angeles, and the scope of the CARES Act as a result of the global COVID-19 pandemic. These orders and moratoriums may be extended, updated, and changed.

MORATORIUMS ON EVICTIONS

What are the restrictions on Residential Evictions in California?

Through Executive Orders issued on March 16 and 27, 2020, California has created a statewide moratorium on residential evictions for renters who cannot pay their rent because of Covid-19 related economic hardships. The eviction moratorium is in effect from March 27 through May 31, 2020. The Executive Orders also grant local governments the power to limit the evictions of residential and commercial tenants in their cities.

The California eviction moratorium mainly applies to residential premises. The City of Los Angeles has additional moratoriums on evictions for both residential and commercial properties, as detailed further below.

The specific ban on evictions across California is as follows:

- Until May 31, 2020, the deadline for a residential tenant to respond to an eviction lawsuit for nonpayment of rent is extended by 60 days. This 60 day is in addition to the statutory answer period. To obtain the benefit of the 60-day extension, the tenant must meet all of the following requirements:
    - Before March 27, 2020, the tenant paid rent due to the landlord according to a lease/other agreement.

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- The tenant notifies the landlord in writing before the rent is due, or within 7 days thereafter, that the tenant needs an extension to pay all or some of the rent because of financial hardship related to Covid-19, including but not limited to the following:
    - The tenant could not work because she/he was sick with a suspected or confirmed case of Covid-19 or was caring for a household member who was sick with a suspected or confirmed case of Covid-19;
    - 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
    - The tenant needed to miss work to care for a child whose school was closed in response to Covid-19.
- 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 claim of an inability to pay. This documentation may be provided to the landlord by the time the payment of back rent is due.

- Through May 31, 2020, no previously obtained eviction order can be enforced to evict a residential tenant for nonpayment of rent if the tenant satisfies the requirements above.
- Tenants are still obligated to pay some or all of their rent in a timely manner if they are able to do so.
- While there is rent deferral, there is no rent forgiveness, so tenants are still obligated to pay all unpaid rent to the landlord. Landlords are entitled to collect all unpaid rent.
- All public housing authorities are requested to extend deadlines for housing assistance recipients or applicants to deliver records or documents related to their eligibility for

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programs, to the extent that those deadlines are within the discretion of the housing authority.

Did Judicial authorities amend laws in California to halt evictions?

Following the Governor's executive orders, California judicial authorities amended state laws pertaining to evictions and foreclosures. The amendments listed below will remain in effect for 90 days after the Governor declares the state of emergency is lifted or until these laws are amended or repealed.

These amendments to the eviction laws are in addition to the provisions of the Executive Orders detailed above.

- For 90 days after the state of emergency, courts will not issue a summons to appear to the tenant in an eviction unlawful detainer lawsuit, except if it is necessary to protect public health and safety.
- If an unlawful detainer has already been filed, for 90 days after the state of emergency, Courts may not enter a default judgement or entry of default if the defendant fails to appear, unless the Court finds both: (1) the unlawful detainer is necessary to protect public health and safety; and (2) the tenant has not appeared in the action within the time provided by law, including any extensions permitted by the executive orders.
- For 90 days after the state of emergency, if a tenant has filed an appearance in the eviction lawsuit, the Court will set a trial date at least 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 1, 2020, must be continued at least 60 days from the initial date of trial.

Does the Price Gouging law, Penal Code section 396, restrict residential evictions during and after Covid-19 in California?

California Penal Code section 396 makes it unlawful to evict any tenant of residential housing and rent or offer the premises to another person for a rental price greater than what the evicted

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tenant could be charged (i.e., 10% increase discussed above.) This restriction applies to the time period during an emergency and for 30 days or any other extended mandated time period thereafter. However, evictions that were legally commenced prior to the state of emergency may be continued as well as evictions of a tenant for any other law purpose. Penal Code section 396 existed prior to the Covid-19 emergency, but the Executive Orders extended its enforcement until May 31, 2020.

Is there a pending bill limiting the eviction of commercial tenants in California?

There is a proposed bill in the California legislature that would prohibit landlords from evicting tenants in commercial properties, including businesses and non-profit organizations, during a state of emergency. A violation of this proposed law would be a misdemeanor, an unlawful business practice, and an act of unfair competition. The bill has not yet passed. This fact sheet will be updated if the bill becomes law.

What are the prohibitions on residential evictions in the City of Los Angeles?

On March 31, 2020, the City of Los Angeles temporarily prohibited evictions of residential and commercial tenants for failure to pay rent due to Covid-19. On May 12, 2020, the LA City Council extended the eviction moratorium below for 12 months after the Covid-19 emergency is declared over.

These restrictions on evictions by the City of LA are in addition to the restrictions set out by the state of California in the Executive Order and by the California Judicial authorities detailed above.

- No owner shall evict or attempt to evict a residential tenant for nonpayment of rent starting March 4, 2020, through the end of the local emergency as and when declared by the Mayor of LA (Local Emergency Period) and for 12 months after the Local Emergency Period if the tenant is unable to pay rent due to Circumstances Related to Covid-19.

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- An owner includes any owner or agent of the residential or commercial premises offered for rent, as well as prior or subsequent owners.
- Circumstances related to Covid-19 include the loss of income due to a Covid-19 related workplace closure, child care expenditures due to school closures, health-care expenses related to being ill with Covid-19 or caring for a member of the tenant's household or family who is ill with Covid-19, or reasonable expenditures that stem from government-ordered emergency measures.
- Tenants shall have up to 12 months following the expiration of the Local Emergency Period to repay any past due rent.
- Tenants may use the protections afforded in this section as an affirmative defense in an unlawful detainer action.
- Tenants are still obligated to pay lawfully charged rent, including as modified by the parties.
- Tenant and owner may, before the expiration of the Local Emergency Period or within 90 days of the first missed rent payment, whichever comes first, mutually agree to a plan for repayment of unpaid rent selected from options promulgated by the Housing and Community Investment Department (HCID) for that purpose.

- No owner shall carry out or attempt to carry out a No-Fault Eviction during the Local Emergency Period. A No-Fault Eviction means any eviction for which the notice to terminate a tenancy is not based on an alleged fault of the tenant.
- No owner shall evict or attempt to evict a tenant during the Local Emergency Period based on the presence of unauthorized occupants, pets, or nuisance related to Covid-19.
- No owner shall charge interest or a late fee on rent not paid under the provisions listed above.

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- An owner shall give written notice of the protections afforded by these provisions within 15 days of May 12, 2020. Failure to provide notice may result in penalties.
- Additionally, an owner shall give written notice of these protections during the Local Emergency Period and for 12 months after its termination each time the owner serves any eviction notice, including notices to pay or quit, terminate a residential tenancy, or a notice to perform covenant or quit. The HCID shall make the form notice available to provide to the tenants, which must be used, without modification of content or format, by the owner.
- These provisions apply to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices served or filed on or after March 4, 2020.
- Nothing in these provisions shall prohibit an owner from seeking to evict a residential tenant for a lawful purpose and through lawful means.
- If an owner violates any of the above provisions, except for no. 5, an aggrieved residential tenant may institute a civil proceeding for injunctive relief, direct money damages, and any other relief the Court deems appropriate, including, at the discretion of the Court, an award of a civil penalty up to $10,000 per violation depending on the severity of the violation. If the aggrieved residential tenant is older than 65 or disabled, the Court may award an additional civil penalty up to $5,000 per violation, depending on the severity of the violation. The Court may award reasonable attorney fees and costs to a residential tenant who prevails in any such action. The Court may award reasonable attorney's fees and costs to an owner who prevails in any such action and obtains a Court determination that the tenant's action was frivolous. A civil proceeding by a residential tenant under this section shall commence only after the tenant provides written notice to the owner of the alleged violation, and the owner is provided 15 days from the receipt of the notice to cure the alleged violation. The remedies in this paragraph apply starting May 12, 2020, and are not exclusive nor preclude any person from

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seeking any other remedies, penalties, or procedures provided by law.

- An owner who violates these provisions shall be subject to the issuance of an administrative citation by the City. Issuance of an administrative citation shall not be deemed a waiver of any other enforcement remedies provided in the LA Municipal Code.

What are the prohibitions on Commercial Evictions in the City of Los Angeles?

- No owner shall evict a tenant of Commercial Real Property during the Local Emergency Period and for three months thereafter if the tenant is unable to pay rent due to Circumstances Related to the Covid-19 pandemic.
    - Commercial Real Property refers to any parcel of real property that is developed and used either in part or in whole for commercial purposes. This does not include commercial real property leased by a multinational company, a publicly-traded company, or a company that employs more than 500 employees.
    - Circumstances Related to Covid-19 include loss of business income due to a Covid-19 related workplace closure, child care expenditures due to school closures, health care expenses related to being ill with Covid-19 or caring for a member of the tenant's household or family who is ill with Covid-19, or reasonable expenditures that stem from government-ordered emergency measures.
    - Tenants shall have up to three months following the expiration of the Local Emergency Period to repay any past due rent.
    - Tenants may use the protections afforded in this section as an affirmative defense in an unlawful detainer action.
    - Nothing in this article eliminates any obligation to pay lawfully charged rent.

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- No owner shall charge interest or a late fee on rent not paid under these provisions.
- These provisions apply to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after March 4, 2020.
- An owner who violates these provisions shall be subject to the issuance of an administrative citation by the City. Issuance of an administrative citation shall not be deemed a waiver of any other enforcement remedies provided in the LA Municipal Code.

These restrictions commercial evictions by the City of LA are in addition to the restrictions set out by the California Judicial authorities detailed above.

What are the prohibitions on the removal of Rent Controlled Units from the housing market?

No owner may remove occupied residential real property from the rental market under the Ellis Act during the pendency of the Local Emergency Period. Further, tenancies may not be terminated under the Ellis Act until 60 days after the expiration of the Local Emergency Period.

The Ellis Act is a California state law that allows landlords to evict all tenants in rent-controlled units if they are planning to "change the use of the building" or "go out of business" by removing all of the units in the building from the rental market.

What are the Prohibitions on Evictions in the County of Los Angeles?

There is a temporary moratorium on evictions for nonpayment of rent by residential or commercial tenants impacted by Covid-19 in the County of LA, per its Executive Order, as follows:

Commencing March 4, 2020, through May 31, 2020, no residential or commercial property owner (Landlord) shall evict a residential or commercial tenant (Tenant) in the *Unincorporated County* for: (1) nonpayment of rent, late charges, or any other fees accrued if the tenant demonstrates an inability to pay rent and/or related charges

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due to financial impacts related to COVID-19, the state of emergency regarding COVID-19, or following government-recommended COVID-19 precautions, and the tenant has provided notice to the landlord within seven (7) days after the date that rent was due, unless extenuating circumstances exist, that the tenant is unable to pay; or (2) reasons amounting to a no-fault eviction under the County Code, unless necessary for health and safety reasons.

These provisions apply to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices served or filed on or after March 4, 2020.

Tenants shall have six (6) months following the termination of these provisions by the County of LA to pay the landlord any amounts due and owing pursuant to the paragraph above. Tenants and Landlords are encouraged to agree to a payment plan during this six-month period, but nothing in these provisions shall be construed to prevent a Tenant from paying a Landlord any amount due incrementally during this six-month period.

These restrictions on evictions by the County of LA are in addition to the restrictions set out by the state of California in the Executive Order and by the California Judicial authorities detailed above.

Are there bans on Evictions and Rent Freezes in the other Southern California Cities?

Several cities, including Anaheim, Long Beach, Pasadena, Riverside, San Diego, Santa Ana, and Santa Monica, have issued ordinances supporting moratoriums on evictions for nonpayment of rent due to Covid-19. These ordinances also prohibit landlords from charging or collecting late fees for missed rent payments during the emergency period.

The City of Glendale has issued a rent freeze from March 24 through April 30, 2020. The rent freeze applies to all rental units in homes, townhouses, condominiums, and rental units that received a Certificate of Occupancy on or after February 1, 1995.

MORATORIUM ON RENT INCREASES

Does the Price Gouging law, Penal Code section 396, restrict rent increases during and after Covid-19 in California?

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The rental price advertised, offered, or charged for housing to any existing or prospective tenant in California may not be increased by more than 10% during an emergency and for 30 days thereafter, or for any further authorized time period. This provision applies to rental housing with an initial lease term of no longer than one year and includes mobile home parks and campgrounds.

An increase in rental prices beyond 10% is permitted if the landlord can prove the increase was due to the costs for repairs or additions beyond normal maintenance that were amortized over the rental term or the increase was contractually agreed to by the tenant before the emergency. Penal Code section 396 existed before the Covid-19 emergency, but the Executive Orders extended its enforcement until May 31, 2020.

Are there restrictions on rent increases in the City of Los Angeles?

The Mayor and city council temporarily prohibited rent increases on occupied rental units that are subject to the Los Angeles City Rent Stabilization Ordinance (RSO). No rent increase that became effective on or after March 30, 2020, is allowed unless approved by HCIDLA. Rent increases cannot be imposed until one year after the Covid-19 emergency declaration period is lifted. Rent increases are not retroactive and do not accumulate during the one year period.

Rental units in the City of LA may be subject to the City's Rent Stabilization Ordinance (RSO), if the property was built on or before October 1, 1978. Units constructed after July 15, 2007, that replace demolished RSO rental units may also be covered under the RSO. The RSO regulates rent increases and evictions.

MORATORIUM ON FORECLOSURES & MORTGAGE PAYMENT FORBEARANCE

In the Executive Orders, the California Department of Business Oversight and the Business, Consumer Services, and Housing Agency were tasked with working with financial institutions to find tools to provide residents with relief from residential foreclosures. Financial institutions holding home or commercial mortgages including banks, credit unions, government-sponsored enterprises, and institutional investors, were requested to implement immediate

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moratoriums on foreclosures and related evictions when they arose out of Covid-19 causes such as a substantial decrease in the household or business income, substantial out-of-pocket medical expenses caused by Covid-19, or by any local/state/federal government response to Covid-19.

Is there a moratorium on recording Foreclosures and an extension of time to make mortgage payments in California?

Based on the Executive Orders, the Governor obtained informal agreements from Citigroup, JPMorgan Chase, U.S. Bank, Wells Fargo, and nearly 200 state-chartered banks, credit unions, permitting a 90-day informal moratorium on recording foreclosures and/or grace period to make mortgage payments for Californians economically impacted by Covid-19. Under the proposal, Californians struggling with the Covid-19 crisis may be eligible for the following relief upon contacting their financial institution:

- 90-Day Grace Period for Mortgage Payments: Financial institutions will offer, consistent with applicable guidelines, mortgage payment forbearances of up to 90 days to borrowers economically impacted by Covid-19. In addition, those institutions will:
    - Provide borrowers a streamlined process to request a forbearance for Covid-19 related reasons, supported with available documentation;
    - Confirm approval of and terms of forbearance program; and
    - Provide borrowers the opportunity to request additional relief, as practicable, upon a continued showing of hardship due to Covid-19.

- No Negative Credit Impacts Resulting from Relief: Financial institutions will not report derogatory tradelines (e.g., late payments) to credit reporting agencies, consistent with applicable guidelines, for borrowers taking advantage of Covid-19-related relief.
- Moratorium on Initiating Foreclosure Sales or Evictions: For at least 60 days, financial institutions will not initiate foreclosure

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sales or evictions, consistent with applicable guidelines.

- Relief from Fees and Charges: For at least 90 days, financial institutions will waive or refund at least the following for customers who have requested assistance:
  - Mortgage-related late fees; and
  - Other fees, including early CD withdrawals (subject to applicable federal regulations).

Is there a suspension of Judicial Foreclosures in California?

The Executive Orders issued by the Governor permitted local governments to suspend judicial foreclosures of mortgaged properties for homeowners affected by Covid-19 through May 31, 2020. To comply with the Executive Order, the California Judicial authorities amended the laws pertaining to mortgage foreclosures as follows:

- Until 90 days after the Governor declares the state of emergency lifted, or until this rule is amended or repealed by the Court, all lawsuits for foreclosure on a mortgage or deed of trust, including any action for a deficiency judgment, are stayed, and Courts may take no action and issue no decisions or judgments in the case, unless necessary to further public health and safety.
- Any statute of limitations for filing such foreclosure or deficiency lawsuits is tolled. The period for taking any legal action to foreclose or for a deficiency judgment, including rights of redemption from a foreclosure sale is extended.

MORATORIUMS ON EVICTIONS AND FORECLOSURES BY THE FEDERAL GOVERNMENT UNDER THE CARES ACT

Does the CARES Act impose a moratorium on Evictions?

Yes, the CARES Act imposes a 120 moratorium on evictions in properties with a federally backed mortgage loan or a federally backed multifamily mortgage loan. During the 120-day period beginning on March 27, 2020, the lessor of such dwellings may not:

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- Initiate a legal action to recover possession of the dwelling from the tenant for nonpayment of rent or other fees or charges; or
- Charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.
- May not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
- May not issue a notice to vacate until after the expiration of the 120-day period.

Does the CARES Act impose a moratorium on Mortgage Foreclosures?

Except for vacant or abandoned property, a servicer of a federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 27, 2020.

What are the provisions for Loan Forbearance on federally backed loans under the CARES Act?

Starting from March 27, 2020, and until the termination of the state of emergency by the President or December 31, 2020, whichever comes sooner, a borrower with a federally backed mortgage loan (Fannie May, Freddie Mac, FHA, VA, Dept. of Agriculture) experiencing financial hardship due, directly or indirectly, to the Covid–19 emergency may request a forbearance on the federally backed mortgage loan, regardless of delinquency status, by

(a) submitting a request to the borrower's servicer, and (b) affirming that the borrower is experiencing a financial hardship during the Covid–19 emergency.

Upon a request by a borrower, such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower's request, either the initial or extended period of forbearance may be shortened.

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During a period of forbearance, no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract, shall accrue on the borrower's account.

What are the provisions for Loan Forbearance for Multifamily Properties with federally backed loans under the CARES Act?

A multifamily borrower with a federally backed multifamily mortgage loan experiencing financial hardship due, directly or indirectly, to the Covid–19 emergency may request a forbearance on loan payments if the borrower was current on its payments as of February 1, 2020. Such a borrower may submit an oral or written request for forbearance to the borrower's servicer, affirming that the multifamily borrower is experiencing a financial hardship during the Covid–19 emergency.

Based on documented financial hardship, the lender may provide the forbearance for up to 30 days; and extend the forbearance for up to 2 additional 30 day periods upon the request of the borrower provided that, the borrower's request for an extension is made during the covered period, and, at least 15 days prior to the end of the prior forbearance period. A multifamily borrower shall have the option to discontinue the forbearance at any time.

A multifamily borrower that receives a forbearance under this section may not, for the duration of the forbearance:

- Evict or initiate the eviction of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges; or
- Charge any late fees, penalties, or other charges to a tenant for late payment of rent.
- May not require a tenant to vacate a dwelling unit located in or on the applicable property before the date that is 30 days after the date on which the borrower provides the tenant with a notice to vacate; and
- May not issue a notice to vacate until after the expiration of the forbearance.

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