Navigating California's and Los Angeles County's Eviction and Rent Increase Moratoriums During COVID-19: Updates for Commercial & Residential Landlords and Tenants

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LATEST LOS ANGELES COUNTY UPDATE FOUND HERE: Navigating the 2021 Updates to Los Angeles County's Eviction Moratorium During COVID-19

UPDATE: On August 14, 2020, California judicial authorities voted to lift the emergency rules on eviction and foreclosure moratoriums. Permitted eviction proceedings will resume September 2, 2020.

CALIFORNIA

What are the restrictions on Residential Evictions in California?

The statewide restrictions on residential evictions in California have been extended through September 30, 2020, by the Governor of California in his Executive Order dated June 30, 2020. Our prior fact sheet details the various bans on residential evictions in California and can be found here: **Federal, California, and Los Angeles Region Moratoriums on Evictions, Rent Increases, and Mortgage Foreclosures**

Does California's 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 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.

The Governor of California has extended the enforcement of Penal Code section 396 through September 30, 2020, via his Executive Orders.

Details on eviction moratoriums during Covid-19 under California's price gouging law, and the civil and criminal penalties for violating section 396, are explained in our prior fact sheet available here: **Understanding California's Price Gouging Laws: The Do's & Don'ts of Price & Rent Increases during State Emergencies**.

Did California Judicial authorities amend laws to Halt Evictions?

They did, ***but not anymore***. Following the Governor's executive orders, in April 2020, California judicial authorities amended state laws pertaining to evictions and foreclosures. California Courts issued rules staying all eviction cases until 90 days after the Governor declared the state of emergency to be over.

However, on August 14, 2020, California courts ended that stay and permitted eviction cases to resume as of September 2, 2020. Specifically,

- Courts will issue a summons to appear to the tenant in eviction unlawful detainer lawsuits starting September 2, 2020.
- Courts will set trial dates in eviction cases at least 60 days after a request for trial is made unless the Court finds an earlier trial date is necessary to protect public health and safety.
- Starting September 2, 2020, stays on pending judicial foreclosure actions will be lifted, and any deadlines in such actions will no longer be deferred.

COUNTY OF LOS ANGELES EVICTION MORATORIUM

What Do I Need to Know about the Moratorium on Commercial & Residential Evictions and Rent Increases Enacted by the County of Los Angeles?

The County of Los Angeles issued detailed guidelines on the Moratoriums on Commercial and Residential Evictions and Residential Rent Increases on June 3, 2020, June 6, 2020, and July 21, 2020. The various provisions are detailed below.

What are the Key Points to Note about the Eviction & Rent Increase Moratorium in LA County?

- The **Moratorium** is in place from **March 4, 2020**, through **September 30, 2020,** unless extended further by the County.
- The Moratorium applies to **residential and commercial tenancies** and mobile home space renters.
- This Moratorium applies to nonpayment eviction notices, no-fault eviction notices, rent increase notices, and unlawful detainer actions, served and/or filed, on or after March 4, 2020.
- This Moratorium applies to all cities and unincorporated areas in the County of Los Angeles, where no other local city moratorium is in place. If a city's moratorium does not address tenants covered by this Moratorium, and effective July 21, 2020, does not include the same or greater tenant protections as the provisions of this Moratorium, then this Moratorium shall apply to those tenants.
- Any eviction notice served before the Moratorium, but whose notice period had not fully run before March 4, 2020, is tolled during the Moratorium. Any notice of termination or eviction served on or after March 4, 2020, and during the Moratorium is null and void.
- Lease terms that ended during the Moratorium shall be extended until the Moratorium expires.
- Starting June 1, 2020, **Commercial Tenants with 100+ employees, Multinational Companies, or Publicly Traded Companies are not covered by the Moratorium**.

What is the Prohibition on Commercial and Residential Evictions?

During the Moratorium, a Landlord shall not evict a residential, commercial or mobile home space renter, serve a notice to evict, file an unlawful detainer, take other steps to terminate a tenancy, or make a Tenant vacate the property:

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  - For nonpayment of rent, costs, fees, late charges, interest if:
    - The Tenant demonstrates an inability to pay rent, costs, fees, because of a financial impact related to Covid-19;
    - The Tenant provides the Landlord with a notice of inability to pay within seven calendar days of the date rent, costs, fees were due, unless extenuating circumstances prevented the Tenant from providing timely notice, including but not limited to the illness of the Tenant or a family member;
    - Tenants are encouraged but not required to provide the notice to the Landlord in writing;
    - A commercial tenant includes, but is not limited to, a Tenant using a property as a storage facility for commercial purposes;
    - The notice to Landlord can be provided in writing or orally.
  - For any reason not based on the fault of the Tenant, unless the eviction is necessary to protect the health and safety of the occupants or those who live and work nearby.
  - For unauthorized occupants or pets on the premises, or for nuisance relating to the number or noise of the occupants and pets, if the occupants and pets are present on the premises because of Covid-19.

What Factors are Considered to Determine the Financial Impact on the Tenant due to Covid-19?

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  - Substantial loss of household income;

- Substantial loss of revenue due to business closure, increased costs, reduced revenues, or other similar reasons impacting rent payment;
- Loss of paid hours of work or wages;
- Layoffs;
- Extraordinary out of pocket medical impacts;
- Other substantial loss of income, earnings, or revenue related to Covid-19; and
- The loss of income, earnings, or revenues is greater than what would reasonably be expected had Covid-19 not occurred.

What is Included in Making a Determination if a Financial Impact on the Tenant is Related to Covid-19?

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  - Suspected or confirmed cases of Covid-19;
  - Caring for household or family members who have Covid-19;
  - Compliance with local government stay home and other business closure orders;
  - Extraordinary medical expenses related to Covid-19;
  - Childcare needs related to Covid-19;
  - Any other event that would not have occurred but for Covid-19.

How Can a Tenant Establish the Financial Impact Related to Covid-19?

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  - A Residential or Commercial tenant with less than 9 Employees can self-certify the financial impact related to Covid-19 by providing a written, signed, self-certification in a form similar to the HCIDLA's Self Certification form, without supporting documents, or, by any other means, including a verbal notice to Landlord. Here is a **Notice to Landlord template provided by the County of Los Angeles**.

- A Commercial Tenant with 10 to 100 employees must provide the Landlord with documentation to demonstrate a financial impact related to Covid-19. Such documentation from the Tenant may include, but is not limited to, bank statements before and after Covid-19, gross sales receipts before and after Covid-19, proof of increased expenses before or after Covid-19, government closure orders restricting the Tenant's business. A Tenant operating during Covid-19 can also demonstrate a financial impact related to Covid-19.

Is There a Stay on Pending Eviction Proceedings?

A Landlord who has started to evict a Tenant for nonpayment of rent and receives notice from Tenant as discussed above, and the Tenant demonstrates extenuating circumstances prevented the Tenant from providing the Landlord with the notice earlier; then the Landlord must cease all eviction efforts, including dismissing any unlawful detainer filed. The Tenant shall not be deemed the prevailing party and is not entitled to recover costs or legal fees as a result of such a voluntary dismissal by the Landlord.

How is the Number of Employees for a Commercial Tenant Calculated?

- - The number of Tenant's Employees as of March 4, 2020.
  - For a Sole proprietor, it is the total number of Employees at any business location, including outside the County.
  - For all other Tenants, it is the total number of the Tenant's Employees at any business location, including outside the County, and including Employees of any subsidiary, parent, or affiliated entities.
  - For a Franchise, the number of Employees is calculated separately from the Employees of other separately owned franchise locations and the franchisor.
  - An Employee is defined as per the California Labor Code.

How is Payment of Rent to Be Made by the Tenant After the Moratorium Ends?

- A Tenant is obligated to pay all rent incurred during the Moratorium. Tenants should pay all or partial rent if they are financially able to do so, and are encouraged to pay all unpaid rent as soon as they are financially able to do so. Landlords can accept partial rent payments due during the Moratorium without forfeiting the right to complete rent repayment.
- Residential and Commercial tenants with less than nine (9) employees have 12 months from the end of the Moratorium to pay back rent and related charges due but unpaid during the Moratorium. Tenants are not required to make payments of back rent and charges according to a schedule required by the Landlord.
- Commercial tenants with 10 to 100 employees have 6 months from the end of the Moratorium to pay rent and related charges due and unpaid during the Moratorium. Payments shall be made in 6 equal monthly installments unless the Landlord and Tenant agree to an alternate payment schedule.
- Commercial Tenants with more than 100 employees, multinational companies, and publicly traded companies must pay rent and related charges due and unpaid during the Moratorium on June 1, 2020, unless parties agree to an alternate payment schedule.
- Landlords cannot charge late fees, interest, penalties, or other related fees or costs for rent due but unpaid during the Moratorium, if the Tenant repays rent within the time limits set out above.
- Tenants and Landlords are encouraged to agree on a payment plan during this Moratorium Period. It shall not prevent a Landlord from requesting and accepting partial rent payments, or a Tenant from making such payments if the Tenant is financially able to do so.

What is the Prohibition on Rent Increases?

- For Tenancies subject to the County's Rent Stabilization Ordinance or Mobile Home RSO, a Landlord shall not increase rent while the Moratorium is in effect. Any rent increase notices sent before the Moratorium are tolled until the end of the Moratorium.
- Landlords shall not impose any new pass-throughs or charge interest or late fees on unpaid rent or other amounts otherwise owed during the Moratorium Period. Landlords are prohibited from retroactively imposing or collecting any such amounts following the termination of the Moratorium.

What are Prohibitions on the Harassment of Tenants?

A Landlord shall not harass or intimidate a Tenant protected by the Moratorium by threatening to terminate the lease, evict the Tenant, threatening to serve a notice of eviction or lease termination, demanding payment for rent, which is not yet due per this Moratorium, shut off utilities, etc. Landlords who harass or intimidate Tenants shall be guilty of a misdemeanor under LAMC section 2.68.320.

What Happens if there is a Violation of the Moratorium?

Violations of the Moratorium may be determined by a court in a private right of action between the Tenant and Landlord. The Moratorium is an affirmative defense to an unlawful detainer action.

Can Landlords and Tenants Have Agreements Between Them Concerning the Moratorium?

Landlords and Tenants may enter into any agreement regarding this Moratorium so long as the agreement does not violate any provisions of the Moratorium. Any provisions that violate the Moratorium are void.

Does the County of LA Assist in Voluntary Dispute Resolution?

Landlords and Tenants are encouraged to work together to resolve any disputes relating to the Moratorium and may contact the Director of the Department of Consumer and Business Affairs ("DCBA") for the County of LA to provide mediators to help parties reach a mutually satisfactory outcome.

CITY OF LOS ANGELES

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

On March 31, 2020, the City of Los Angeles temporarily prohibited residential and commercial tenants' evictions 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. A detailed explanation of the ban on residential evictions in the City of Los Angeles is in our **prior fact sheet available here**.

To the extent the City of Los Angeles's Moratorium provides lesser or no protections for residential or mobile home tenants, the provisions of the Los Angeles County's Moratorium, discussed above, will apply.

What Are the Rent Repayment Options for Residential Tenants?

Before the local emergency's expiration or within 90 days of the first missed rent payment, whichever comes first, a Landlord and Tenant may (but are not required to) agree to a plan for repayment of unpaid rent. The repayment period may be extended by mutual agreement by the Landlord and Tenant.

The Landlord may voluntarily extend a discount to the Tenant during the emergency. The City of Los Angeles' Housing and Community Investment Department (HCIDLA) suggests the following options:

- Tenant to repay on a monthly basis: ($Balanced Owed) divided by 12 monthly payments. For example: ($2,000 past due rent/12 payments = $166.67 monthly payment).
- Tenant to repay on a bi‐weekly basis: ($Balanced Owed) divided by 26 bi‐weekly payments. For example: ($2,000 past due rent/26 payments = $76.92 bi‐weekly payment).
- Tenant to repay on a weekly basis: ($Balanced Owed) divided by 52 weekly payments. For example: ($2,000 past due rent/52 payments = $38.46 weekly payment).

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. A detailed explanation of the ban on commercial evictions in the City of Los Angeles is in our **prior fact sheet available here.**

To the extent the City of Los Angeles's Moratorium provides lesser or no protections for commercial tenants, the provisions of the Los Angeles County's Moratorium, discussed above, will apply.

Did the City of Los Angeles Bar Rent Increases?

By an Ordinance dated May 12, 2020, the maximum adjusted rent of any occupied rental unit may not be increased unless necessary to obtain a just and reasonable return until one year following the emergency's termination.

To the extent the City of Los Angeles's Moratorium provides lesser or no protections for rent increases, the provisions of the Los Angeles County's Moratorium, discussed above, will apply.

Monisha Coelho represents clients – from startups to multinational corporations – resolve business and real estate disputes in state and federal court litigation. She has particular expertise handling a wide range of real estate issues involving landlords, traditional and hard money lenders, and developers. She is licensed to practice law in India and advises clients on cross-border US-India business transactions and litigation.

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