Follow-up Resources to *Property Management in a Rent Cap/COVID Era*

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Landlord Tenant Folder: https://www.car.org/riskmanagement/qa/landlord-tenant-folder

C.A.R. Member Legal Services
Agents: (213) 739-8282; Broker-Owners/Office Managers: (213) 739-8350
525 South Virgil Avenue, Los Angeles, CA 90020

- COVID-19 Tenant Relief Act of 2020 (Part of AB 3088)
- COVID-19 Landlord Issues
- Landlord-Tenant Guide for REALTORS®
- Abandoned Personal Property After Termination of a Tenancy
- Abandoned Rental Real Property
- Foreign Investor Property Owner Withholding
- Landlord-Tenant Law: Pets and Assistance (Service and Emotional Support) Animals
- Landlord and Employee Notice of Asbestos
- Lease/Rental Disclosure Chart for REALTORS®
- Mandatory Section 8 and Source of Income Discrimination
- Marijuana Issues for REALTORS®
- Nonresident Property Owner Withholding
- Option Contracts and Leases with Option to Purchase
- Property Managers and the Contractor's Licensing Law
- Property Management Frequently Asked Questions
- Proposition 65 Warnings
- Rent Cap and Just Cause Eviction Law (Rent Control, AB 1482)
- Rental Property and Foreclosure
- Requirements When Using Credit Reports/Scores to Screen Tenants
- Residential Rent Control Relief Law
- Security Deposits
- Unlawful Detainer: The Eviction Process in California
- Vacation Rentals

Participant Questions:

- *What are the rules when managing your own property?*
- *What happens to unlicensed property managers?*
- *Does the California Department of Real Estate (DRE) get involved in any way with a REALTOR® managing (their own) rental properties without broker supervision?*
- *Can a REALTOR® managing his/her own property continue to use applicable C.A.R. forms?*
- *Does a list exist of all required and suggested forms to be used in a Property Management transaction?*

Real Estate Licensing Laws

California's real estate licensing laws can be found in the California Business and Professions Code Sections 10000 through 11287 and in regulations adopted by the DRE via California Code of Regulations, title 10, Sections 2705 through 3109.

Reference: Licensing Chart for REALTORS® and License Requirements for REALTORS®.

A real estate license is generally required whenever someone manages property for others for a fee. This includes activities such as negotiating leases and rental agreements and collecting rents. (California Business & Professions Code § 10131.01(a)(3)(D).)

However, there are several exceptions to the licensing requirements:

1. Owners may manage their own properties (Cal. Bus. & Prof. Code § 10131(b)).
2. Resident managers living on the premises (Cal. Bus. & Prof. Code § 10131.01(a)(1)).
3. Those acting under a court order (i.e., bankruptcy trustee, court-appointed receiver) (Cal. Bus. & Prof. Code § 10133(a)).
4. Activities of an officer of a corporation or general partner of a partnership with respect to the corporation's or partnership's own property if the officer or general partner receives no additional compensation for those activities (Cal. Bus. & Prof. Code § 10133(a)(1)).
5. An employee of a property management firm that manages a residential apartment building, complex, or court under the supervision and control of either a broker of record or a qualified salesperson (2 years full-time experience in last 5 years and who has written contract with broker to perform supervisory duties) employed by the property management firm, may perform the following activities (Cal. Bus. & Prof. Code § 10131.01(a)(2a-e)): Showing rental units and common areas; handling rental applications; accepting security deposits, fees for credit checks or administrative costs, and rent payments; and accepting signed leases and rental agreements.

It is a misdemeanor to compensate a non-licensee for performing "licensed activities," punishable by a fine not to exceed $100 for each offense (Cal. Bus. & Prof. Code §§ 10137, 10138). It is also a public offense to act as a real estate broker or salesperson unless a real estate license has been obtained, punishable by a fine of not more than $20,000 or imprisonment of not more than six months in a county jail, or both, and in the case of a corporation, a fine not exceeding $60,000 (Cal. Bus. & Prof. Code §§ 10130, 10139).

In addition, a non-licensee is exposed to civil liability for the consequences of performing acts requiring a license without being licensed; for example, where a non-licensee undertakes to handle a transaction requiring a license and one of the parties later withdraws from the transaction after discovering that his or her "agent" had no license. The non-licensee would be exposed to a potential civil claim by all parties claiming injury or damage and would be unable to sue for recovery of compensation earned in a transaction.

Investigations are made by the DRE's Enforcement Section on the basis of written complaints received from the public against real estate brokers and salespersons accused of misleading or defrauding customers.

All C.A.R. Standard Forms
https://www.car.org/transactions/standard-forms/quick-reference-guide

Purchase Agreements (Residential)
Supplements & Addenda To Purchase Agreements (Residential)
Disclosure Forms (Residential)
Listing Agreements (Residential)
New Construction Forms (Residential)
Rental/Lease & Property Management Forms (Residential)
Office Operation, Administration and Trust Fund Compliance
Listing & Purchase Agreements (Non-Residential Forms)
Exchange Agreement Forms and Lease (Non-Residential Forms)
Business Opportunity Forms (Non-Residential Forms)

December 2020 Forms Release

New Forms

Home Fire Hardening Disclosure and Advisory (HHDA, 12/20)
Fair Housing and Discrimination Advisory (FHDA, 10/20)

Revised Forms

Contingency for Sale of Buyer's Property (and Notice to Remove Contingencies) (COP, 12/20)
Contingency Removal (CR, 12/20)
Notice to Buyer to Perform (NBP, 12/20)
Rent Cap and Just Cause Addendum (RCJC, 12/20)
Square Footage and Lot Size Advisory and Disclosure (SFLS, 12/20)

Rental/Lease & Property Management Forms

- 48-Hour Notice of Inspection Prior to Termination of Tenancy (FEHN, 4/11)
- Additional Info Regarding Termination of Tenancy Within One Year After Foreclosure (NTAF, 11/12)
- Application to Rent/Screening Fee (LRA, 12/19)
- Bed Bug Disclosure (BBD, 12/18)
- Business Listing Agreement (BLA, 4/13)
- Business Purchase Agreement (BPA, 11/14)
- Buyer Early Occupancy Addendum (BEO, 12/16)
- Cancellation of Lease or Rental (CLR, 6/17)
- Commercial and Residential Income Listing Agreement (CLA, 6/17)
- Commercial Lease Construction Accessibility (CLCA, 11/16)
- Commercial Property Purchase Agreement & Joint Escrow Instructions (CPA, 12/18)
- Denial of Rental Application for Credit Reasons (DRA, 12/19)
- Environmental Issues Addendum (CML-EIA, 4/09)
- Exclusive Authorization for Vacation Rental, Short-Term Occupancy Listing Agreement (VRL, 6/17)
- Exempt Seller Disclosure (ESD, 12/16)
- Extension of Lease (EL, 11/11)
- Interim Occupancy Agreement (Buyer in Possession Prior to Close of Escrow) (IOA, 12/19)
- Keysafe/Lockbox Addendum and Tenant Permission to Access Property (KLA, 4/13)
- Landlord in Default Addendum (LID, 11/12)
- Landlord Environmental Consent (CML-LEC, 4/09)
- Lead-Based Paint and Lead-Based Paint Hazards Disclosure, Acknowledgment and Addendum (for Pre-1978 Housing Sales, Leases, or Rentals) (FLD, 11/10)
- Lease Listing Agreement (Exclusive Authorization to Lease or Rent) (LL, 6/18)
- Lease/Rental Commission Agreement (LCA, 6/18)
- Lease/Rental Mold and Ventilation Addendum (LRM, 6/16)
- Modification of Terms/Addendum to Authorization and Right to Sell, Acquire or Rent, or Other Agreement Between Principal and Broker (MT, 6/19)
- Move In/Move Out Inspection (MIMO, 11/07)
- Notice of Change In terms of Tenancy (CTT, 6/20)
- Notice of Entry (NOE, 11/13)
- Notice of Non-responsibility (NNR, 6/15)
- Notice of Obligation to Pay Rental or Lease Payments in Cash (NPC, 4/11)
- Notice of Right to Inspection Prior to Termination of Tenancy (NRI, 11/12)
- Notice of Sale and Entry (NSE, 11/13)
- Notice of Termination of Tenancy (NTT, 10/20)
- Notice of Termination of Tenancy Within One Year After Foreclosure (NTAF, 11/12)
- Notice to Pay Rent or Quit (PRQ, 9/20)

- Notice to Perform Covenant (Cure) or Quit (PCQ, 10/20)
- Notice to Quit (NTQ, 6/20)
- Option Agreement (OA, 12/16)
- Parking and Storage Disclosure (PSD, 12/17)
- Pet Addendum (PET, 11/13)
- Pre-Move Out Inspection Statement (PMOI, 4/03)
- Pre-Possession Notice to Tenant to Pay (PPN, 6/17)
- Property Management Agreement (PMA, 6/17)
- Property Management Addendum (PMAD, 11/09)
- Representative Capacity Signature Disclosure (For Buyer Representative) (RCSD-B, 06/20)
- Representative Capacity Signature Disclosure (For Landlord Representatives) (RCSD-LL, 6/19)
- Representative Capacity Signature Disclosure (For Tenant Representative) (RCSD-T, 6/19)
- Residential Lease After Sale (RLAS, 12/19)
- Residential Lease or Month-To-Month Rental Agreement (LR, 12/19)
- Seller License to Remain in Possession Addendum (SIP, 6/17)
- Tenant Flood Hazard Disclosure (TFHD, 12/18)
- Tenant in Possession Addendum (TIP, 6/19)
- Trust Bank Account Record for All Trust Funds Deposited and Withdrawn (TAA, 11/07)
- Trust Bank Account Record for Each Beneficiary (TAB, 11/07)
- Trust Bank Account Record for Each Property Managed (TAP, 11/07)
- Trust Funds Received and Released (TF-11, 10/99)
- Vacation Rental Agreement (VRA, 1/06)
- Water-Conserving Plumbing Fixtures and Carbon Monoxide Detector Notice (WCMD, 12/16)
- Water Submeter Addendum (WSM, 6/17)
- Wire Fraud Advisory (WFA, 12/17)

C.A.R Sample Form Letters (via zipForm® in the C.A.R. Sample Letter Library (CARSL))

- Abandoned Personal Property (Commercial) Letter (APPC)
- Abandoned Personal Property (Residential) Letter (APPR)
- Access to Premises Letter (AP)
- Belief of Abandonment Resident (Real Estate) Letter (BOAR)
- Broker Trust Account Letter to Bank (BCA)
- Confirmation of Conversation (COC)
- Fence Repair (or Replacement) - Proposal (DN)
- Instructions When Tenant Vacates on Termination of Tenancy (ITV)
- Lease Expiration Letter (LEL)
- Notice of Change of Property Manager (NCOPM)
- Owner to Tenant Security Deposit (OTSD)
- Security Deposit Return (SDR)
- Seller Failure to Provide Tax Withholding Letter (FPTW)
- Tenant Failure to Comply with Lease/Rental Agreement (TFCL)

Participant Questions:

- *Do you need to use both a Property Management Agreement and a Lease Listing Agreement when taking on a new property management client or owner?*
- *Must an agent under broker supervision acting as a manager run all funds through a trust account?*
- *Should a will or trust be set up in the event that something happens to the broker?*
- *How does the owner's funds get returned in the event of unforeseen circumstances?*
- *Does a broker need a trust fund if the broker does not comingle any of the owner's funds?*

Property Management Agreement & Trust Account

C.A.R. Form PMA (Property Management Agreement) satisfies the requirements for a property management agreement between a broker and a property owner. An exclusive agreement must be in writing and have a definite termination date (Cal. Bus. & Prof. Code § 10176).

A trust account is not required but most brokers who engage in property management maintain one for a variety of reasons. For instance, if the broker is holding the tenant's security deposit, the deposit must be held in a trust account. The landlord and the broker may agree in the property management agreement that a certain sum of money or reserve funds will be allocated for expenses, repairs and maintenance to be drawn upon as needed and those funds must also be held in a trust account. Paragraph K of Form PMA addresses what funds the property manager is authorized to take from the trust funds and in what order.

A property manager can collect a commission directly out of the rent paid by the tenants if the broker has a trust account and if the property management agreement allows for it. If the broker does not have a trust account, typically the tenant will deliver the full rent check to the owner, who then would have to write a check each month to the broker for the amount of the commission.

Under DRE Regulation 2835 when a check is made up in part of monies owed to the principal and monies owed to the broker and it is not practicable to separate such funds, then the broker can deposit the check into the trust account but must withdraw his or her funds within 25 days from the date of deposit (Business and Professions Code § 10176(e); Regulation of the Real Estate Commissioner § 2835).

Per DRE Regulation 2831.21, Trust Account Reconciliation, the balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Regulation of the Real Estate Commissioner § 2831 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities.

Participant Questions:

- *Should clients be notified if a coworker has been tested for or suspected of contracting COVID-19?*
- *Are owners and property managers required to advise tenants in a building if they become aware that one of the tenants has contracted COVID-19?*
- *How should licensees handle minors with regard to PEAD Forms?*
- *What are the restrictions on for sale signs during the pandemic? Is other marketing material allowed?*
- *Is there a place where landlords, much like tenants, can obtain rental relief program support?*
- *What is the current status of the SBA Economic Injury Disaster Loans?*

COVID-19 Prevention Protocols

PWR Coronavirus (COVID-19) Microsite: https://www.pwr.net/coronavirus/

C.A.R. Coronavirus (COVID-19) Updates: https://www.carcovidupdates.org

California Blueprint for a Safer Economy: https://covid19.ca.gov/safer-economy/

COVID-19 Employer Playbook: https://files.covid19.ca.gov/pdf/employer-playbook-for-safe-reopening--en.pdf

COVID-19 Industry Guidance: Real Estate: https://files.covid19.ca.gov/pdf/guidance-real-estate.pdf

COVID-19 Checklist for Real Estate Transactions: https://files.covid19.ca.gov/pdf/checklist-real-estate--en.pdf

Mandatory Government Showing Requirements, including Best Practices Guidelines and Prevention Plan (C.A.R. Document BPPP): https://www.pwr.net/downloads/covid19/CARBPPP.pdf

Shown Properties Rules for Entry: https://www.pwr.net/downloads/covid19/CAR_PostedRulesforEntry.pdf

Assembly Bill (AB) 685, COVID-19: Imminent Hazard to Employees: Exposure: Notification: Serious Violations, effective January 1, 2021, is codified as Labor Code Sections 6325, 6432 and 6409.6. This new law requires an employer, within one business day, to notify all employees that they may have been exposed to COVID-19 if they were on the premises of the worksite within the infectious period as a person who had COVID-19. The notice must describe information regarding COVID-19 related benefits to which the employee may be entitled.

Whether a landlord is required to notify tenants of a confirmed case within a property may vary by jurisdiction and circumstance, taking into account privacy matters. As a best practice, all tenants should be advised to follow Centers for Disease Control and Prevention COVID-19 Guidance as well as any applicable federal, state and local regulations regarding social distancing, face coverings and other protective measures.

The Property Entry Advisory and Declaration (PEAD) Forms demonstrate compliance with the California Department of Public Health/CalOSHA COVID-19 Industry Guidance for Real Estate Transactions that requires real estate licensees to: confirm the showing (posted) rules for the property with anyone who will be entering the property; provide a copy of the broker's "Prevention Plan" applicable to the property; and obtain affirmative representations by the visitor(s) to the property, no earlier than twenty-four hours in advance, to follow that plan before entering the property.

The C.A.R. Form Coronavirus Property Entry Advisory and Declaration - Visitor (PEAD-V) requires a visitor to the property to represent not being afflicted with COVID-19, or in contact with someone else so afflicted, within the last fourteen days; not experiencing any COVID-19 symptoms; and that he/she will inform the broker if, after the date the PEAD-V is signed, there is a change in the visitor's health conditions or knowledge that potentially puts others at risk or invalidates the representations in the form. The PEAD-V is intended for use only by visitors, and not the property owner or tenant/occupant. It can be used for sales transactions or rental property.

Open houses or showings that are open to the general public on a walk-in basis and "Open House" signs or ads remain prohibited. All real estate showings require either an appointment or a digital sign-in process prior to entry. The in-person showing may only include the real estate agent and no more than two visitors, who reside within the same household or living unit, at a time, and sellers and/or tenants should temporarily leave the residence/unit during the in-person showing. Furthermore, all information must be delivered electronically, and agents should discontinue providing handouts or other types of promotional or informational materials.

COVID-19 Financial Relief for REALTORS®

C.A.R. COVID Hotline: (213) 351-8450, covidreliefhotline@car.org

- Pandemic Unemployment Assistance (PUA) {as part of the CARES Act and CARES Act II}
- U.S. Small Business Administration (SBA) Loans {selecting the best loan option…}
  - Paycheck Protection Program (PPP) Loans
  - Economic Injury Disaster Loans (EIDL)
  - SBA Express Bridge Loans (EBL)
  - California Small Business COVID-19 Relief Program
- Direct Payments and Other Assistance
- Relief Programs and Guidance for Employers
- Financial Resources for Rental Housing Property Owners
- California Employment Development Department (EDD) Coronavirus 2019 Resources
- California Labor & Workforce Development Agency Coronavirus 2019 Resources
- California COVID-19 Site - Business and Employers - Broad Assistance
- California Small Business COVID-19 Relief Grant Program

New C.A.R. Standard Forms Related to COVID-19

CDC-TD - Centers for Disease Control COVID-19 Tenant Declaration

By Order of the CDC, if a residential tenant who cannot pay rent signs the form and delivers to the landlord, the landlord may not evict, by actual removal of the tenant, for non-payment of rent. {timelines vary by law}

CRFP - Coronavirus Rent Forgiveness, Termination of Tenancy and Possession of Premises Agreement

This form documents a voluntary agreement by a residential landlord and tenant. The landlord agrees to forgive all or part of unpaid rent in exchange for possession of the property on a date certain.

CRRA - Coronavirus Unpaid Rent Repayment Agreement

This voluntary form documents an agreement by a tenant to, over time, pay back a landlord for rent that was unpaid since the beginning of the COVID19 state of emergency. If a local government has issued an order or ordinance establishing a payback period, that local enactment needs to be followed. Under superseding state law, the payback period can begin no later than March 1, 2021 and end no later than March 1, 2022.

CURC - Coronavirus Unpaid Rent Calculation

If a residential tenant has not paid rent anytime beginning March 1, 2020, a landlord must document the amounts owed and the dates the rent was due as part of an eviction notice as part of this form.

DCFD - Tenant Declaration of COVID-19 Related Financial Distress

California law prohibits a landlord from evicting a residential tenant if he/she signs and delivers to the landlord a declaration under penalty of perjury that he/she is unable to pay rent due to a COVID-19 related reason. An unsigned version of this form must be attached to an eviction notice for unpaid rent since March 1, 2020. No proof of inability to pay is needed unless tenant is a “high income” tenant.

NTRA - Notice of Tenant of COVID-19 Tenant Relief Act of 2020

This form, informing a residential tenant of the tenant’s rights under California law must be given to a tenant before serving a tenant with an eviction notice.

NTT-CTRA - Notice of Termination of Tenancy: COVID Tenant Relief Act (Oct. Release)

During the COVID covered period, effective March 1, 2020, a tenancy can only be terminated for “cause” and the allowable reasons, and minimum notice periods, are specified in the form. The just cause requirements apply to all properties even if they were formerly exempt under AB 1482.

PCQ-CTRA - Notice to Cure or Perform Covenant or Quit: COVID Tenant Relief Act

During the COVID covered period, attempts to evict a tenant for failure to meet a non-monetary, contractual obligation, the notice to perform should be followed by a separate notice to quit.

PMC-CPP - Notice to Cure Covid Protected Period Monetary Covenant or Quit

This form satisfies the statutory requirements for a 15-day notice to pay money, other than rent, that is due between March 1, 2020 and August 31, 2020.

PMC-TP - Notice to Cure Covid Transition Period Monetary Covenant or Quit

This form satisfies the statutory requirements for a 15-day notice to pay money, other than rent, that is due after September 1, 2020.

PRQ-CPP - Notice to Pay Covid Protected Period Rent or Quit

This form satisfies the statutory requirements for a 15-day notice to pay rent or quit, for unpaid rent that is due between March 1, 2020 and August 31, 2020.

PRQ-TP - Notice to Pay Covid Transition Period Rent or Quit

This form satisfies the statutory requirements for a 15-day notice to pay rent or quit, for unpaid rent that is due after September 1, 2020. Residential tenant is obligated to pay 25% of amount due.

Participant Questions:

- *What is the amount allowed to file in small claims court in 2021?*
- *If a tenant has recently been evicted and owes money, how soon can a money judgment be obtained?*
- *When can we take a tenant to small claims court for unpaid rent even if we can't evict them?*
- *When does the non-payment of rent due to COVID no longer serve as an exemption to eviction?*
- *Can we collect a portion of the rent owed under unlawful detainer action as long as it is within the amount allowable in small claims court and in accordance with COVID-era regulations?*
- *Can a defaulting tenant request a jury trial in the filed answer to the unlawful detainer?*
- *Is the notice to cure still three (3) days? When does the new fifteen (15) day noticing apply?*
- *What qualifies as proper and legal service of notice? Is an email acknowledgement acceptable?*

Small Claims Court & Unlawful Detainer Process

A **small claims court** is a court of limited jurisdiction and is a division of the local superior court (Cal. Code Civ. Proc. § 116.210). The court can hear civil cases between private litigants without attorneys to represent them and can be used for most disputes up to $10,000 for a natural person and $5,000 for a legal non-natural person (e.g., corporation, LLC, LLP) (Cal. Code Civ. Proc. § 116.220-116.221). If a plaintiff loses in small claims court, there is no right of appeal; however, the defendant can appeal if he or she loses (Cal. Code Civ. Proc. § 116.710(b)). Small claims court cannot be used for unlawful detainer (eviction) proceedings, which must be brought in Superior Court (Cal. Code Civ. Proc. § 116.220).

Beginning August 1, 2021 (and until February 1, 2025), landlords can take tenants to small claims court to recover unpaid rent debt that came due beginning March 1, 2020, regardless of how much the tenant owes, even if the amount of unpaid rent is more than the normal small claims court limit and even if a person has filed more than two (2) small claims court actions for more than $2,500 within the same year. In general, the rent that came due starting March 1, 2020 may only be collected as a personal debt unrelated to possession of the property. Additionally, when filing such a case, the landlord will have to demonstrate that they made a good faith effort to seek rental assistance for the tenant or that they cooperated with a tenant seeking such assistance.

Historically, a landlord may evict a tenant who refuses to pay rent or otherwise abide by the terms of the rental agreement. It is necessary to obtain a judgment and writ of possession from a court of law before actually evicting the tenant, and this form of court proceeding is referred to as an unlawful detainer action. When the notice period elapses, the unlawful detainer action can be filed in court and the summons and complaint can be served upon the tenant (Code Civ. Proc. § 1161). The landlord must attach specified documents to the unlawful detainer complaint, including a copy of the rental agreement, the notice of termination and a "Proof of Service" indicating how the notice of termination was served. The notice may be served by the landlord, manager, or any other person over the age of eighteen and a copy of the notice should be delivered to the tenant personally or via a court-defined "substituted service". The complaint must also be "verified" (signed by landlord under penalty of perjury) (Cal. Code Civ. Proc. § 1166). In a "contested" eviction, where the tenant files an answer, a tenant can ask for a jury trial.

The COVID-19 Tenant Relief Act of 2020 ("Rent Relief Law"), as part of AB 3088: Tenancy: rental payment default: mortgage forbearance: state of emergency: COVID-19, and extended under SB 91: COVID-19 relief: tenancy: federal rental assistance, temporarily requires all residential landlords in California (even in the case when the property would otherwise be exempt) to comply with the just cause eviction procedures of the Tenant Protection Act of 2019 (AB 1482) in order to find a tenant guilty of unlawful detainer on or after March 1, 2020.

Based on the Rent Relief Law, a landlord can no longer serve a three (3)-day notice for rental nonpayment if the landlord is demanding rent that came due on or after March 1, 2020. The notice to pay rent or quit and the notice to perform covenant or quit must be significantly modified to include required statutory language of a fifteen (15)-day notice to pay rent or quit or a fifteen (15)-day notice to perform covenant or quit. Per AB 1482, a three (3)-day notice to perform covenant or quit alone cannot result in termination of tenancy, as a tenant must first be given notice to correct the violation if possible. But if the tenant fails to cure, the owner could then issue a three (3)-day notice (excluding Saturdays, Sundays and other judicial holidays) to include a termination of tenancy.

Participant Questions:

- *Do these laws apply to just residential real property or to commercial and industrial properties as well?*
- *What is the required noticing period for a rent increase, and would a new lease be required?*
- *Is raising rent permissible during the COVID-19 period?*
- *Can a landlord evict a tenant who refuses to accept a rent increase as allowed under the law?*
- *How are utility payments specified and factored into the rent cap law?*
- *If a garage conversion is utilized as an accessory dwelling unit, how is this handled under the law?*
- *What are the "at-fault" and "no-fault" reasons for terminating a tenancy or refusing to renew a lease?*
- *With regard to a fixed term lease where an owner does not want to renew can this be done?*
- *Does an owner need to worry about just cause if the tenant has been in possession of the property for less than twelve (12) months? What about a situation where a tenant has signed a one-year lease?*
- *A seller is looking to rehab a property before placing it on the market. Is this allowable?*
- *If a landlord owns all the units in an HOA is the landlord exempt from AB 1482?*
- *If a property is exempt under AB 1482, how is no-fault termination now handled during the pandemic?*

AB 1482: Tenant Protection Act of 2019: Tenancy: Rent Caps*

***ALERT:** The rent cap and just cause eviction law (AB 1482) has been temporarily superseded by the COVID-19 Tenant Relief Act of 2020 (AB 3088), the eviction moratorium extension and state rental assistance program (SB 91), and the federal eviction moratorium order issued by the Centers for Disease Control (CDC Order).

Under AB 3088, all residential properties are now, and through June 30, 2021, subject generally to the just cause eviction rules despite the fact that those properties are formally exempt from AB 1482. This is true even if the tenant has not been in occupancy for more than twelve (12) months. Furthermore, some cities and/or counties have in place more restrictive rental ordinances and/or have enacted a temporary rent freeze during the pandemic for rent controlled properties. California also has an anti-price gouging law which may apply to certain residential properties when a state of emergency is declared by the governor.

Form RCJC: Rent Cap and Just Cause Addendum

Effective January 1, 2020, Form RCJC must be incorporated into the rental agreement or lease. It should be included as an addendum to the lease for all new and renewing tenants, and for current month to month tenants, the RCJC should be incorporated into the rental agreement by providing the notice by a change in terms of tenancy via Form CTT: Notice of Changes in Terms of Tenancy.

In order to claim the exemption for a single-family residence or condominium, a statutory notice is required to be given to the tenant as follows (box in the exemption paragraph of Form RCJC must be checked): "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."

Rent Cap

Rent increases for residential properties are capped at five percent (5%) of the lowest gross rent charged during the previous twelve (12)-month period plus cost of living, or up to a hard cap of ten percent (10%), whichever is lower. All rent increases since March 15, 2019 count toward the rent cap, and if above the permissible rent cap, will have to be rolled back effective January 1, 2020. Note: If a city or county limits rent increases to amount less than that authorized by the state law, then the local ordinance applies.

AB 1482 requires use of the Consumer Price Index for All Urban Consumers for All Items (CPI-U) for the metropolitan area in which the property is located. The CPI-Us are published by the United States Bureau of Labor Statistics (BLS) and the CPI is determined using the twelve (12)-month period from April to April. Rent increases are divided into two categories: increases that take effect before August 1st of any calendar year and increases that take effect on or after August 1st.

For the purposes of calculating rent under the rent cap, the following are not included: discounts, incentives, concessions, or credits. The gross per-month rental rate and owner-offered discounts must be separately listed and identified in the lease or rental agreement or any amendments to an existing lease or rental agreement. The owner must still abide by the 30-day notice for rent increases less than 10% and the 90-day notice for increases of 10% or more where the landlord is exempt from AB 1482.

Just Cause

Landlords may only evict for "just cause" - a list of fifteen (15) reasons divided into two (2) categories. Just cause eviction only applies to tenants who have been continuously and lawfully occupying the property for twelve (12) months or more. If a month-to-month tenant has been occupying the property for less than twelve (12) months, an owner may use a thirty (30)-day notice of termination.

"At fault" termination of tenancy is generally based on a tenant's beach of the lease, among other reasons, and *does not require* the payment of relocation assistance or rent waiver. *(NOTE: Based on AB 3088, evicting a tenant "for cause" can be considered 'retaliatory' if done against a tenant not paying COVID-19 rental debt.)*

1. *Non-payment of rent.* (*NOTE: This is currently stayed under AB 3088, SB 91, and the CDC Order.)*
2. A breach of a material term of the lease after being given notice to correct the violation.
3. *Nuisance.* (*NOTE: Local jurisdictions' orders may prohibit evictions based on such infractions.)*
4. Using the property for an unlawful purpose.
5. Criminal activity on the property or common areas or criminal threats against the owner or agent on or off the property.
6. *Refusal to allow entry.* (*NOTE: Local rules during the coronavirus pandemic may alter entry protocol.)*
7. Waste, meaning damage to the property, and by case law this requires a showing of substantial or permanent diminishment or depreciation in the market value of the property.
8. *Assigning or subletting the property in violation of the lease. (NOTE: Certain COVID-19 rules apply.)*
9. *Tenant had a written lease that terminated on or after January 1, 2020, and after a written request or demand from the owner, the tenant has refused to execute a written extension or renewal for an additional term of similar duration with similar provisions, provided that those terms do not violate the just cause law or any other law. (NOTE: AB 3088 & SB 91 limit this cause through June 30, 2021.)*
10. Failure of an employee or agent to vacate after termination of employment.
11. *Tenant fails to vacate after providing the owner with their own termination notice or after an agreed upon (voluntary) surrender. (NOTE: The CDC Order limits this cause through March 31, 2021.)*

"No fault" termination of tenancy is allowed when the tenant has not breached the lease and *will require* the landlord to pay one month's rent in relocation assistance or grant the tenant a rent waiver. In most cases, a sixty (60)-day notice for a month-to-month tenant who has occupied the property for more than a year is required. (*NOTE: The CDC Order prohibits "no fault" evictions of any kind through March 31, 2021.)*

12. "Owner occupancy" where the owner, or the spouse, domestic partner, children, grandchildren, parents or grandparents of the owner, decide to occupy the property, assuming there is a lease provision permitting it.

13. Withdrawal from the rental market. (Note: AB 3088 does allow an owner of a single-family property or condo who is in contract to sell to a buyer who will take occupancy to terminate the tenancy.)

14. *Substantial remodeling or demolition of the property. (NOTE: AB 3088 temporarily prohibits the use of the "substantial remodel" exemption through June 30, 2021 with limited exception.)*

15. Compliance with a government order to vacate the property.

Exemptions

The following exemptions apply to both the rent cap and just cause portions of the law. Note: There is no numerical limit to the number of single-family properties that can be owned and still quality for the exemption(s).

1. Housing that has been issued a certificate of occupancy within previous fifteen (15) years.

2. Single family properties and condos if: notice of the exemption is provided to the tenants and the owner is not a Real Estate Investment Trust (REIT, as defined by Internal Revenue Code § 856), corporation or an LLC where an owner is a corporation.

3. A property containing two separate dwelling units within a single structure (a traditional duplex) in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy, and neither unit is an accessory dwelling unit (ADU) or junior ADU.

4. Dormitories constructed and maintained in connected with any institution of higher education or a kindergarten and grades one through twelve, inclusive, school.

5. Housing restricted by deed for persons and families of very low, low, or moderate income, as defined, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income.

These additional exemptions apply only to the just cause portion of the law.

6. Housing accommodations where the tenant shares bathroom or kitchen facilities with an owner occupant.

7. Single-family owner-occupied properties where up to two (2) units or bedrooms are rented out. These can include an accessory dwelling unit (ADU) or junior ADU.

8. Vacation (transient/tourist) rentals, meaning properties that are rented out for thirty (30) days or less.

9. Nonprofit hospitals, religious facilitates, extended care facilities, care facility for the elderly and licensed residential care facilities, among others.

Participant Questions:

- *Is it discrimination if a homeowner is not interested in enrolling in the Section 8 Program?*
- *If a landlord rents to a tenant with a housing voucher, does the property need to be in a trust or LLC?*
- *Can a minimum income level and credit qualification in the listing of the rental be considered unlawful?*
- *Can a landlord set a general income level policy, such as net income must be three times rent?*
- *Can the application review process ever be treated like a sales negotiation in order to gain higher rent?*
- *How are additional proposed tenants' income treated relative to income requirements?*
- *During the application review can a landlord reject an applicant solely based on his or her credit score?*
- *Can a landlord deny a prospective tenant based on employment tenure or status?*
- *How are applications accepted or rejected relative to applicants' background and listed referrals?*
- *Is prepaid rent considered part of the security deposit and how should it be handled?*

Mandatory Section 8 and Source of Income Discrimination

Effective January 1, 2020, with the passage of Senate Bill (SB) 329: Discrimination: housing: source of income, housing providers cannot refuse to rent to someone, or otherwise discriminate against them, because they have a housing subsidy, such as a Section 8 Housing Choice Voucher. This law adds discrimination based on "source of income" as a protection to people using any federal, state, or local housing subsidy to pay their rent.

The California Department of Fair Employment and Housing (DFEH) enforces the Fair Employment and Housing Act (FEHA), which prohibits a housing provider from taking the following (partial listing) actions based only on a person's source of income or the housing assistance that a person receives. This includes private landlords, property management companies, homeowners' associations, corporations, and others who rent residential property in California. However, homeowners who live in their house, condominium or other single-family unit and rent out only one room within that unit are exempt from the law.

1. Advertise or state a preference for tenants with certain sources of income.
2. Refuse an application from a prospective tenant, charge a higher deposit or rent, or treat the prospective tenant or tenant differently in any other way because the prospective tenant or tenant uses a Section 8 voucher or other housing subsidy.
3. Refuse to enter to into or renew a lease because the tenant will use a housing voucher or subsidy.
4. Interrupt or terminate any tenancy because the tenant is using or plans to use a housing subsidy.
5. Falsely represent that a rental unit is not available for tenancy because the prospective tenant will be using a Section 8 housing voucher or other housing subsidy.
6. Require any clause, condition or restriction the terms of an agreement solely because the tenant will use a Section 8 voucher (with the exception of those required by a particular subsidy program).
7. Restrict a tenant's access to facilities or services at the rental property (such as a pool or fitness center) or refuse repairs or improvements to the property associated with the tenancy, because of the use of the Section 9 housing voucher or other housing subsidy.

A housing provider may still screen for income eligibility to ensure an applicant will be able to pay rent; however, housing providers must consider all legal verifiable sources of income for an applicant or resident. If a tenant or applicant is using a housing subsidy, the housing provider is only permitted to consider the tenant's portion of the rent as part of a financial or income standard. The housing provider must also consider the total income of persons (proposing to) residing together on the same basis as the total income of married persons (proposing to) residing together. Additionally, rents for existing Section 8 Housing Choice Voucher rental assistance tenants may not exceed the rents charged for units with tenants who do not receive rental assistance.

Screening Tenants Based on Consumer Reports

Most landlords utilize consumer reports and/or credit scores when they screen prospective tenants and may take an "adverse action," which is a negative action against a prospective tenant, such as declining the prospective tenant or raising the security deposit based solely or partly on the prospective tenant's consumer report and/or credit score in compliance with the federal Fair Credit Reporting Act ("FCRA"), the California's Consumer Credit Report Agencies Act ("CCRAA") and the California's Investigative Consumer Reporting Agencies Act ("ICRAA").

Regardless of their source of income, housing providers still have the right to screen all applicants according to their lawful tenant screening criteria. A landlord must first obtain the prospective tenant's consent to access his or her consumer report and/or credit score, such as via C.A.R. FORM LRA (Application to Rent/Screening Fee). The best risk management practice for a property manager will be to use a screening service that allows a prospective tenant to go directly to the service provider to sign up, directly give authorization and pay for ordering of such reports and be provided legally required disclosures and notices directly from the service provider.

A landlord must provide an adverse action notice to the prospective tenant when an adverse action such as rejecting a prospective tenant, based solely or partly on the information in the prospective tenant's consumer report and/or on the credit score is taken by the landlord. C.A.R. Form DRA (Denial of Rental Application for Credit or Other Reasons) may be used as an adverse action letter.

Landlord-Tenant Security Deposits

A security deposit is any payment, fee, deposit or charge, including those imposed as an advance payment of rent. It includes any charges imposed at the beginning of the tenancy to reimburse the landlord for costs associated with processing a new tenant, other than "application screening fees" (Cal. Civ. Code §1950.5(b)). No lease or rental agreement may contain any provision characterizing the security deposit as "nonrefundable" (Cal. Civ. Code § 1950.5(m)). The security deposit can be used to remedy defaults in payment of rent, to repair damage caused by the tenant (beyond normal wear and tear), to clean the unit, and to satisfy any other tenant defaults or obligations under the rental agreement or lease (Cal. Civ. Code §§ 1950.5 (b), 1950.7(c)).

There are no restrictions on what the landlord can do with the deposit during the term of the rental agreement, except for what is required by local ordinance or by the rental agreement or lease. There is no statewide requirement that the security deposit be placed in a special account or that it be placed in an interest-bearing account. However, several local rent control ordinances do require that the security deposit be kept in an interest-bearing account for the benefit of the tenant.

Residential landlords may collect a security deposit not to exceed the monetary equivalent of two (2) months rent for unfurnished units and three (3) months rent for furnished units. Effective January 1, 2020, a landlord may demand only one (1) month security deposit (or two (2) months for furnished unit) for active service members. In addition to the security deposit, a landlord may collect the first month's rent in advance. A landlord may collect six (6) months or more of advance rent payment on leases of at least six (6) months duration (Cal. Civ. Code §1950.5(c)), but collecting two, three, four or five months of advance rent would violate the law.

AB 3088 - Tenancy: rental payment default: mortgage forbearance: state of emergency: COVID-19*

***ALERT: AB 3088 has been extended by SB 91, whereby all previous end dates of January 30, 2021 have now been extended until June 30, 2021.** Also known as the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020, AB 3088 incorporates the COVID-19 Tenant Relief Act of 2020, expands the Homeowner Bill of Rights, brings small landlords (an individual(s) who owns no more than three residential properties, each of which contains no more than four dwelling units) within its protections, and establishes that loan servicers must follow federal guidance regarding the granting of a loan forbearance.

Participant Questions:

- *Based on the new law(s), how is COVID-19 related financial distress determined or proved?*
- *Can late fees for non-payment of rent be applied if the tenants are not COVID-19 impacted?*
- *What happens when a tenant stops paying for utilities and a landlord must assume the ongoing cost?*
- *How is the security deposit handled when a tenant has been behind on rent during the pandemic?*
- *For purposes of high-income tenants, how does it apply to those who share a unit with others?*
- *If a landlord has proof of sufficient tenant funds (e.g., bank account records supplied as part of the application), is there any recourse for the landlord if the tenant stops paying rent?*
- *Can a landlord ask a tenant for employment verification or deny an application based on a job type?*
- *If an owner is looking to sell their property, can they evict the tenant with a notice to terminate tenancy?*
- *Can a landlord simply not renew a lease at its expiration regardless of whether the tenant has paid rent?*
- *Can a landlord and tenant agree to the delivery of property for the forgiveness of past due rent?*
- *What can a landlord do if a tenant is hosting parties in direct violation of the Stay-at-Home Order?*
- *What recourse does a landlord have when it appears there are more people living in the unit than are listed in the lease, when there is an assumed illegal sublet or when the tenant doesn't allow entry?*
- *Can a landlord evict a tenant if the owner plans to move family into the unit?*

COVID-19 Tenant Relief Act of 2020 ("Rent Relief Law")

When a tenant has not paid rent for any period between March 1, 2020 and *January 31, 2021 (Note: SB 91 extends this until June 30, 2021)*, the Rent Relief Law will allow most residential tenants to remain in the rental property through *January 2021 (Note: SB 91 extends this through June 2021*) as long as the tenant makes a declaration under penalty of perjury that they are unable to pay their rent or meet other financial obligations because of circumstances related to the COVID-19 pandemic.

The Rent Relief Law temporarily requires all residential landlords in California to comply with the Tenant Protection Act of 2019 (AB 148) in order to find a tenant guilty of unlawful detainer on or after March 1, 2020. This is the case even when the property would otherwise be exempt under AB 1482. However, an owner of a single-family property or condominium can terminate a tenancy when they are in contract to sell the property to a buyer who will take occupancy.

<u>COVID Protected Period: Rents Due March 1, 2020 - August 31, 2020</u>

The balance of the unpaid rent is still owed to the landlord despite the temporary relief, and a local provision may not permit a tenant a period of time that extends beyond March 31, 2022 to repay COVID-19 rental debt. Landlords can take tenants to small claims court for unpaid rent debt regardless of how much the tenant owes. *(AB 1482 set the recovery date starting March 1, 2021, but this was extended by SB 91 to August 1, 2021.)*

These special rules allowing for the collection of COVID-19 rental debt in small claims court expire February 1, 2025. In general, rent for this period may only be collected as a personal debt unrelated to possession of property. The landlord, however, can deduct the unpaid rent from the security deposit, only if the tenant has agreed, in writing, to allow the deposit to be so applied. After the tenant vacates, then the landlord may make a deduction from the security deposit for COVID rental debt in accordance with the normal security deposit rules.

For COVID-19 protected period rental debt, a fifteen (15)-day notice to pay rent or quit, or to perform covenant or quit must include a declaration form ("Declaration of COVID-19 Related Financial Distress") and the following statutory language. This 15-day notice applies to any financial obligation, such as in the case where the landlord bills the tenant monthly for utilities that are paid for by the landlord and in which the utility reimbursement by the tenant would qualify as rental debt.

> "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."

<u>COVID Transition Period: Rents Due September 1, 2020 - *January 31, 2021 (NOW: June 30, 2021)*</u>

For rent that comes due during this period, the tenant is responsible for paying at least 25%; however, that amount need only be paid by the end of the period *(previously January 31, 2021, now June 30, 2021)*. Otherwise, the tenant would be at risk of being evicted for non-payment of rent through an unlawful detainer process, but not before the end of such period *(previously February 1, 2021, now July 1, 2021)*. For COVID-19 transition period rental debt, a fifteen (15)-day notice to pay rent or quit, or to perform covenant or quit must include a declaration form ("Declaration of COVID-19 Related Financial Distress") and the following statutory language.

"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 and minimum payment (see below) 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.

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 1, 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 cold 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., on 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."

Declaration of COVID-19 Related Financial Distress

COVID-19 related financial distress can be based on either or both a loss of income or an increase in expenses as specified by the tenant in his or her declaration.

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; dated.

Proof of Income: "High-Income" Tenant

If the landlord has proof in their possession of the tenant's status as a "high-income" tenant, then the landlord will want to include this additional notice as part of the 15-day notice. However, this law does not authorize a landlord to now demand proof of income from the tenant, nor does it require the tenant to provide proof of income for the purposes of determining whether the tenant is a high-income tenant.

> "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."

If a tenant delivers back to the landlord a signed declaration of COVID-19 related financial stress (along with any form of objectively verifiable documentation demonstrating such financial distress), the tenant could not then be evicted through the unlawful detainer process.

Exemption for Single-Family Properties or Condos for Sell

To qualify for an exemption to the eviction moratorium, the property must be a single-family property or condominium and the owner cannot be a corporation, a REIT, or an LLC where one of the members is a corporation. A single-family property where a unit or bedroom within the single-family property is rented out separately does not necessarily qualify. Also, an owner of a single-family property secured by an FHA loan is currently prohibited from evicting a tenant.

The notice of exemption should be integrated into the lease and C.A.R.'s "Rent Cap and Just Cause Eviction" (Form RCJC) may be used for this purpose (with the box on the second page of the form checked to claim the exemption). The owner must be in contract to sell to a buyer who intends to take occupancy and if the owner has met these conditions then the owner may serve a notice to terminate tenancy.

SB 91 - COVID-19 Relief: Tenancy: Federal Rental Assistance

Senate Bill 91, signed into law and effective on February 1, 2021, has two major provisions. First, the law extends the rent and just cause eviction moratorium rules of the Tenant Relief Act of 2020 (AB 3088) until June 30, 2021. Second, SB 91 establishes the State Rental Assistance Program to allocate California's share of the federal rental assistance fund.

NEW: C.A.R. Form NTRA-2 (Notice to Tenant of COVID-19 Relief Act)

Per SB 91, the landlord shall provide the new (Form NTRA-2) notice on or before February 28, 2021 to tenants who as of February 1, 2021 have not paid one or more rental payments that came due since March 1, 2020 (and through June 30, 2021). Form NTRA-2 is to notify the tenant that they may have protections through the COVID-19 Tenant Relief Act, and the notice should be utilized even if the landlord is not intending (at least at this time) to file an unlawful detainer action. This notice can be provided concurrently with a notice to pay rent or quit if served prior to February 28, 2021. Any notice to pay rent or quit for rent due between March 1, 2020 and through June 30, 2021 must be made using one of the specialized COVID forms, either C.A.R. Forms PRQ-TP-2 or PRQ-CPP-2. These notices give the tenant fifteen (15) days to respond and must be accompanied by a financial hardship declaration (C.A.R. Form DCFD), which if returned within the 15-day period would preclude a landlord from filing an eviction lawsuit based on non-payment of rent.

C.A.R. Form Libraries: COVID-Leases: Updated February 2021

Form CRFP: Coronavirus Rent Forgiveness, Termination of Tenancy and Possession of Premises Agreement

Form CURC: Coronavirus Unpaid Rent Calculation

Form CRRA: Coronavirus Unpaid Rent Repayment Agreement

Form PMC-CPP-2: Notice to Cure COVID Protection Period Monetary Covenant or Quit (for 3/1 - 8/31/2020)

Form PMC-TP-2: Notice to Cure COVID Transition Period Monetary Covenant or Quit (for 9/1/2020 - 6/30/2021)

Form PRQ-CPP-2: Notice to Pay COVID Protected Period Rent or Quit (for 3/1/2020 - 8/31/2020)

Form PRQ-TP-2: Notice to Pay COVID Transition Period Rent or Quit (for 9/1/2020 - 6/30/2021)

Form NTT-CTRA: Notice of Termination of Tenancy: COVID Tenant Relief Act (prior to 6/30/2021)

Form PCQ-CTRA: Notice to Cure or Perform Covenant or Quit: COVID Tenant Relief Act (non-monetary)

Form NTRA-2: 2021 Notice to Tenant of COVID-19 Tenant Relief Act

Collection of COVID Rental Debt, Tenant Applications, Late Fees and Small Claims Court

Ordinarily, landlords may apply collected rent to the earliest rent owing, unless otherwise indicated. However, under SB 91, the landlord cannot apply a monthly rental payment to any "COVID rental debt" (meaning unpaid rent or any other unpaid financial obligation of a tenant under a tenancy than came due between March 1, 2020 and June 30, 2021) other than the prospective month's rent, unless the tenant has agreed, in writing, to allow it.

Under SB 91, landlords cannot claim (charge) a tenant, or attempt to collect from a tenant, fees assessed for the late payment of that COVID rental debt, or increase fees charged to the tenant or charge the tenant fees for services previously provided by the landlord without charge, if the tenant has submitted a declaration of COVID related financial distress. Furthermore, a landlord may not, while the tenant remains in the property, apply a security deposit to satisfy COVID rental debt, unless the tenant has agreed, in writing, to allow the deposit to be so applied. However, after the tenant vacates, then the landlord may make a deduction from the security deposit for COVID rental debt in accordance with the normal security deposit rules.

A housing provider, tenant screening company, or other entity that evaluates tenants on behalf of a housing provider shall not use an alleged COVID rental debt as a negative factor for the purpose of evaluating a prospective housing application or as the basis for refusing to rent a dwelling unit to an otherwise qualified prospective tenant. Similarly, if the tenant is receiving funds through the state rental assistance program, that money is considered a protected "source of income" under the California Fair Employment and Housing Act.

Landlords may collect COVID rental debt in small claims court without regard to any money amount limit beginning August 1, 2021, but local laws may postpone rent repayment to August 31, 2021. When filing such a case, the landlord will have to demonstrate that they made a good faith effort to investigate whether governmental rental assistance is available to the tenant, seek governmental rental assistance for the tenant, or cooperate with the tenant's efforts to obtain rental assistance from any government entity (Code of Civil Procedure 871.10).

Sale of the tenant's COVID rental debt is prohibited for any tenant whose household income is at or below 80% of the area median income (AMI) for 2020, and the sale or assignment of any COVID rental debt is prohibited until after June 30, 2021. However, a local ordinance adopted by a city or county in response to the pandemic may not permit a tenant a period of time to repay COVID rental debt that extends beyond August 31, 2021.

Under the CDC Order (85 Fed. Reg. 55,292, Sept. 4, 2020), landlords may be prohibited from pursuing evictions for the refusal to renew a lease or for failure to vacate after voluntary surrender, through March 31, 2021. If an eviction would likely render a resident (tenants, lessees, or residents of units who are covered under the order) in question homeless because the individual has no other available housing options, then a resident can claim protection. Landlords should consult with a qualified attorney before seeking to evict a tenant on this basis.

State Rental Assistance Program through the Department of Housing and Community Development

The federal Consolidated Appropriations Act of 2021 (Public Law 116-260) included $25 billion for rental assistance programs allocated to all of the states, and from this, the California Legislature will appropriate $1.4 billion to the State Rental Assistance Program. Landlords and tenants are allowed to apply for California's share of the rental assistance fund beginning mid-March 2021. For larger cities and counties (based on a population of 200,000 or greater), the funds may be allocated through those localities and with slightly different deadlines.

Program Prioritization: The distribution of funds will be prioritized as follows:

- *Round 1*: Eligible households whose income is under 50% of the area median income (AMI).
- *Round 2*: Communities disproportionately impacted by COVID-19 (as determined by HCD).
- *Round 3*: Eligible households whose income is under 80% of the AMI.

Eligible Uses: The prescribed eligible uses for funds are as follows:

- Rental arrears: Limited to 80% of a household's unpaid rental debt accumulated from April 1, 2020 to March 31, 2021, conditioned upon the landlord's agreement to forgive the remaining rental debt owed by any tenant within the eligible household for whom rental assistance is being provided. Such landlord agreement to accept the money as payment in full shall include the landlord's agreement to release any and all claims for nonpayment or rental debt owed, including a claim for unlawful detainer, for the specified time period (Government Code 50897.1(d)).
- Prospective rent payments (up to three months of future unpaid rent depending on availability of funds).
- Utilities, including arrears and prospective payments for utilities.
- Any other expense related to housing as provided in the authorizing federal law.

"Eligible Household": Renter household in which at least one or more individuals meets the following criteria

- Qualifies for unemployment or has experienced a reduction in household income, incurred significant costs, or experienced a financial hardship due to COVID-19.
- Demonstrates a risk of experiencing homelessness or housing instability. This may include a past due utility or rent notice or eviction notice; unsafe or unhealthy living conditions; or any other evidence of such risk as determined by the HCD.
- Has a household income at or below 80% of the AMI.

Rental assistance provided to an eligible household should not be duplicative of any other federally funded rental assistance provided to such household. Eligible households that include an individual who has been unemployed for more than ninety (90) days prior to the application for assistance and households with an income at or below 50% of the AMI are to be prioritized. Household income is determined as either the household's total income for calendar year 2020 or the household's monthly income at the time of application. For household incomes determined using the latter method, income eligibility must be re-determined every three (3) months.

Fair Housing, Accommodations, and Habitability

The California Department of Fair Employment and Housing (DFEH) along with the U.S. Department of Housing and Urban Development (HUD) are responsible for protecting residents from employment, housing and public accommodation discrimination. A violation of the federal law, Americans With Disabilities Act of 1990 (ADA), is also deemed a violation of the California Unruh Civil Rights Act (Cal. Civ. Code § 51(f)). If a REALTOR® is found to have violated the fair housing laws the REALTOR® is subject to penalties from the DRE including the possible revocation of the agent's real estate license. The broker's actions are also a violation of the REALTOR® Code of Ethics and Standards of Practice.

Participant Questions:

- *Can an applicant be denied if they do not have a social security number for a credit report?*
- *Regarding immigration status, can a landlord take into consideration a person's citizenship, or lack thereof, when screening the applicant? Is it legal to provide shelter to a nonresident?*
- *What if a unit is not currently set up to accommodate a person with a disability?*
- *Can an HOA deny tenants the use of common area amenities if contained in the CC&Rs?*
- *What are the different laws for emotional support animals versus service animals?*
- *Can a landlord ask for proof of need for the emotional support animal, distinguishing it from a pet?*
- *What qualifies as verification for a support animal and what if the authorizing doctor is out of state?*
- *What should a landlord do if a support animal is not covered under the owner's insurance policy?*
- *What are the regulations around proper noticing for property entry even if a tenant refuses access?*
- *What if a tenant reports mold that is not obvious; must a landlord conduct mold testing in the unit?*
- *Is a functioning A/C unit required as habitability and can a tenant withhold rent if it's not operating?*
- *Are there any guidelines for normal wear and tear? What about adding terms to a lease agreement that specify landlord and tenant responsibilities as to maintenance based on amount limits or thresholds?*

Tenant Screening and Reasonable Accommodation

C.A.R. Form LRA (Application to Rent/Screening Fee) is a standard tenant application/screening form that can be used to screen a tenant who wishes to apply for a rental. The most common criteria include the applicant's credit score, references from previous landlords, whether or not the person has previous evictions on their record, and whether or not the applicant earns enough to afford the rent. All applications, not just those of accepted tenants, the property manager received as part of her or his real estate activity are documents which are required to be kept for three (3) years. It is important to have a rule which is consistently applied or else a property manager will be open to a potential fair housing or discrimination lawsuit. For certain actions that trigger notification requirements under federal and state laws relative to consumer reports, find more information via C.A.R.'s Requirements When Using Credit Reports and Scores to Screen Tenants.

It is illegal to threaten to disclose information regarding or relating to the immigration or citizenship status of a tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant for the purpose of influencing a tenant to vacate. The most common housing discrimination cases involve disability, in particular, as it relates to a failure to reasonably accommodate a request for an assistance animal to reside at a dwelling. FHA and FEHA require landlords to make reasonable accommodations in their rules, policies, practices or services so as to permit a person with a disability equal opportunity to use and enjoy a dwelling, and reasonable modifications of existing premises at the expense of the disabled person must be allowed.

The ADA (Americans with Disabilities Act) and the broader FEHA (California Fair Employment and Housing Act) require a landlord to allow the tenant to make reasonable modifications to the unit as necessary for his or her condition (42 USC § 3604(f)(3)(B), Cal. Gov't. Code § 12927). Note a modification is a change to the physical living space such as installing a wheelchair ramp. This is different from a "reasonable accommodation" which is a request to change the landlord's rules, policies or procedures. When the tenant leaves the unit, then the tenant must remove the modifications and repair any damage that may be caused by the removal of the modifications. However, a landlord may not be able to ask for the removal of certain alterations if they are of the sort that should not interfere with the future use and enjoyment of the premises by the landlord or future tenants.

Under the Uniform Housing Code, every residential unit must have one room that is at least 120 square feet. Other rooms used for living must be at least 70 square feet. Any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two (1997 Uniform Housing Code § 503(b)). The general standard of two (2) persons per bedroom plus one (1) is a good starting point.

In order to not violate fair housing laws, the property manager must treat all potential tenants the same and standards of occupancy should be the same regardless of the type of tenants applying. Additionally, many condominiums and housing developments have homeowners' associations whose rules and regulations must be drafted, implemented, and enforced in a consistent, nondiscriminatory manner to avoid violating the FHA.

Pets, Emotional Support Animals, and Service Animals

A landlord may completely ban pets from the premises or may specify only certain breeds will be allowed as pets in the lease unless the animal is an assistance animal under fair housing laws. By definition, an animal that is deemed an assistance animal is not a "pet." (2 Cal. Code of Reg. ("CCR") §12005(d)). California law prohibits a landlord from requiring or encouraging an existing tenant or a potential tenant to devocalize or declaw his or her dog or cat in order to secure a residence or to continue renting a residence (Cal. Civ. Code ("CC") §1942.7). Nothing in the law prevents a landlord from requiring only spayed or neutered animals, with the possible exception of an assistance animal under fair housing laws.

A landlord may charge a higher deposit, formally designating some portion of the security as a "pet deposit", but this cannot be imposed on the tenant with an assistance animal. Most leases include provisions that address, in a general way, issues relating to the keeping of pets. For example, most leases include provisions that prohibit a tenant from creating a nuisance, which can be used to give notice and possibly evict a tenant if his or her pet cannot be controlled or tries to attack a neighbor or is too noisy. However, it is good practice to add some specific provisions to the lease itself or in an addendum to the lease (C.A.R. Form PET - Pet Addendum) that directly regulate animal activity.

A "support animal" as a disability-related need provides emotional, cognitive or similar support that alleviates one or more identified symptoms or effects of a person's disability. A support animal does not need to be trained to perform any task to achieve this effect. Although the most common types of support animals are cats and dogs, there is no type, breed or size restriction. Support animals may be also known as comfort, therapy or emotional support animals (2 CCR §12005(d)).

If a tenant with a known or obvious disability asks for a reasonable accommodation to keep a support animal, the disability-related need is also known or obvious (i.e., the animal alleviates effect(s) or symptoms of the disability that makes the tenant "feel better" and thus better able to use and enjoy the dwelling). In such a situation, the landlord must allow the support animal with no further inquiry (2 CCR §12178(b)).

For non-obvious disability and disability-related need, a landlord may ask the tenant for a written verification that (1) he or she is disabled within the meaning of the law (again, not requiring identification of the disability) and (2) that the animal is needed to reasonably accommodate the tenant's disability. As a general rule, a landlord may not inquire about a tenant's disability or the severity of that disability (24 C.F.R. §100.202(c)).

Typically, this written verification is obtained from a medical practitioner, although it is not required that it be from a doctor or therapist. The written verification may be provided by any reliable third party in a position to know of the disability or disability-related need and whose information is credible (2 CCR §12178(g)). There is no official sample written verification form, as fair housing laws discourage a strict adherence to an "official" form, and denials on technical grounds such as failure to use specific procedure, forms, words or phrases are considered invalid (2 CCR §12176(c)(5)). The only clearly defined cases where verification have been deemed insufficient as not being reliable are online certificates or "animal vests" purchased without any individualized assessment of the condition of the disabled by a medical profession (2 CCR §12185(c)(2), 2 CCR §12185(d)(7)).

A landlord must allow any disabled person (tenant, occupant, guest, or persons licensed to train service animals) to keep a service animal or service animal in training on the premises, both within the dwelling and in public areas. Under California law, a service animal is a dog, miniature horse or any other animal that has been specifically trained to perform tasks to assist a person with his or her disability-related needs (CC §54.1; 2 CCR §12005(d)).

Unlike support animal requests, no request for "reasonable accommodation" is required for a service animal. Disabled persons have a civil right to be accompanied by their service animal when accessing the premises. California law provides for an assistance dog identification tag (Cal. Food and Ag. Code §30850). However, such a tag is not required for a disabled person to claim that his or her animal is a service animal. Although many service animals wear vests, a vest is not a legal requirement nor proof that the animal is a service animal (2 CCR § 12185(d)(5)).

Certain insurance companies may deny coverage if a property contains certain breeds of dogs or there may be limitations based on weight or size of the animal. Insurance companies are similarly obligated to follow fair housing laws and should provide a waiver to their general policy for disabled tenants requiring an assistance animal. If the insurance company refuses to do so, the landlord should try to find an insurance company that will cover the property at a comparable cost, without similar restrictions. Alternatively, the landlord may consider a separate animal liability insurance, if available.

Habitability Standards and Rules of Entry

Under California law (*Green v. Superior Court, 10 C3d 616*), in every residential rental agreement the landlord is warranting that the premises are and will be maintained in a condition that meets minimum standards of habitability and a failure to maintain those conditions is a breach of that warranty. The landlord is in "substantial breach" of the warranty of habitability when the landlord fails "to comply with applicable building and housing safety code standards which materially affect health and safety" (Code of Civil Procedure § 1174.2(c)).

This includes a requirement that the premises be watertight and sanitary, free of garbage, and equipped with functioning doors, windows, running water, plumbing, and gas and/or electrical systems (Cal. Civ. Code § 1941.1). Each dwelling unit must be equipped with a dead bolt lock on each main swinging entry door as well as locks on windows designed to be opened, and exterior doors to common areas must also be fitted with locks (Cal. Civ. Code § 1941.3(a)). The landlord must also maintain inside telephone wiring and install at least one usable phone jack in each unit (Cal. Civ. Code § 1941.4).

If residential premises are not maintained in habitable condition as required by law, the tenant is entitled to use the lack of habitability as a defense in an unlawful detainer action, or the tenant, after giving the landlord reasonable written notice, may make his/her own repairs and deduct up to one month's rent as compensation (Cal. Civ. Code § 1942(a)), may vacate the property (Cal. Civ. Code § 1942(a)), or may withhold rent until the property is habitable (Green, supra and Cal. Code if Civ. Pro. §1174.2.). Tenants may use this "repair and deduct" remedy only twice in any twelve (12) month period (Cal. Civ. Code § 1942(a)).

If a property management agreement permits (paragraph K of C.A.R. Form PMA), the broker may deduct money from the trust funds held for expenses and fees for reimbursements incurred in maintaining the residence. Many courts will follow the recommendations of the Department of Consumer Affairs (DCA) Landlord Tenant Guide that suggests a useful life for certain aspects of an apartment; for example, the DCA assumes a useful life of two years for repainting an interior.

C.A.R.'s Lease/Rental Disclosure Chart is specifically designed to provide REALTORS® and their clients with a reference guide for determining the applicability of disclosure laws to the lease and rental transactions most commonly handled by real estate agents. Landlords should remediate actual knowledge of common environmental hazards on the property and have a duty to disclose dangerous conditions or such material facts.

California statutory law specifically limits a residential landlord's right of entry, but it does allow a landlord to enter the leased premises for the purpose of showing the property to "prospective or actual purchasers" (Cal. Civ. Code § 1954(a)(2)). Reasonable notice must be given, and the property can only be shown during normal business hours (Cal. Civ. Code § 1954(d)(1)). Should a tenant refuse access to the property, neither the landlord nor the real estate agent may enter the property. However, refusal may be grounds for eviction.

The California statute granting a landlord the right of entry under certain circumstances does not address what happens if a tenant unreasonably refuses entry to the landlord. The landlord could probably evict the tenant or sue for monetary damages where the entry rights are stated in the lease (Cal. Civ. Code § 1954). If the lease does not describe the landlord's right to enter, it is unclear whether a landlord could evict on this basis.

More information available via C.A.R.'s Landlord Tenant and Property Management legal folder at:
https://www.car.org/riskmanagement/launchpad/Landlord-Tenant-and-Property-Management

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