

Key Elements of AB 3088 Affecting Tenants

- 1) AB 3088 prohibits landlords from evicting tenants for non-payment of rent starting from March 2020 until September 2nd (i.e., this Wednesday) if the non-payment was due to COVID. Landlords CAN seek a lien against the tenant for non-payment in small claims court (not regular court) but not until next March. Many tenants have incomes so low that they will be “judgment proof” from collection on the liens IF they file a claim of exemption with the court in a timely fashion. Tenants are protected from having this information being used in credit and tenant screening.
- 2) Starting February 1, 2021 for unpaid rent after September 2nd related to a loss of income due to COVID, a landlord may file an eviction case but must first try and negotiate with the tenants on a rent they can afford, and take other steps as the bill requires. If the sides cannot agree, the court will propose a rent that is equal to at least 25% of the actual rental amount. A tenant must pay 25% of the rent they owe from September 2nd through January 31st by no later than January 31st to avoid an eviction.
- 3) Beginning October 5th, landlords can begin to file eviction cases for non-payment of rent NOT due to COVID. The definition of COVID is broad enough to include many losses of income due to COVID and the tenant need not provide proof. If these cases do result in an eviction it will take the courts 45-60 days before it is completed. It may take longer in some courts depending on the volume of cases filed.
- 4) Beginning September 2nd, courts can resume eviction proceedings for filings due to issues not related to unpaid rent. This includes tenants who may have had a loss of income due to COVID. These pre-textual reasons for evictions (such as minor property damage or to move a family member in) provide significant leeway for landlords to terminate a lease. Given the imbalance of legal representation in favor of landlords in eviction proceedings, many tenants may be improperly evicted or simply leave the unit voluntarily. This will be a key issue to follow at the community level in the coming months.
- 5) This bill leaves intact local ordinances that prevent evictions except that if a person does not pay rent they must pay off all the rent they owe by March 2022 to avoid an eviction. Many large cities and counties have adopted ordinance that will prevent some or all of the evictions permitted under AB 3088.

Additional Information:

Los Angeles Times Coverage: <https://www.latimes.com/california/story/2020-08-28/california-lawmakers-bar-evictions-deal-tenant-payments-coronavirus#:~:text=Under%20the%20new%20AB%203088,of%20the%20COVID%2D19%20pandemic>

Western Center statement at: <https://wclp.org/statement-on-eviction-protections-in-california-during-the-pandemic-as-of-august-28-2020/>

SENATE RULES COMMITTEE

Office of Senate Floor Analyses
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AB 3088

THIRD READING

Bill No: AB 3088
Author: Chiu (D), Bradford (D), Caballero (D) and Limón (D), et al.
Amended: 8/28/20 in Senate
Vote: 27 - Urgency

PRIOR VOTES NOT RELEVANT

SENATE JUDICIARY COMMITTEE: 7-0, 8/29/20 (Pursuant to Senate Rule 29.10)

AYES: Jackson, Borgeas, Durazo, Lena Gonzalez, Monning, Umberg, Wieckowski

NO VOTE RECORDED: Melendez, Stern

SUBJECT: Tenancy: rental payment default: mortgage forbearance: state of emergency: COVID-19

SOURCE: Author

DIGEST: This bill proposes a set of temporary measures designed to prevent widespread loss of housing through evictions and foreclosures resulting from the economic impacts of the COVID-19 pandemic. Specifically, this bill: (1) establishes a legal framework limiting, until January 31, 2021, evictions in circumstances in which a residential tenant has fallen behind on rent or other payment obligations under their lease due to financial hardship caused by the pandemic; and (2) establishes procedural protections for small landlords who become delinquent on their mortgage payments and a right to a written explanation for borrowers with mortgages on properties with one-to-four residential units when they are denied forbearance. Separately, this bill makes technical and clarifying modifications to the statewide just cause for eviction and anti-rent gouging laws enacted last year pursuant to AB 1482 (Chiu, Chapter 597, Statutes of 2019).

ANALYSIS:

Existing law:

- 1) Provides, pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act, that, as to federally backed mortgages securing one-to-four unit properties, a lender must provide up to 360 days forbearance to a borrower who requests such forbearance during the period beginning March 13, 2020, and ending at an undefined time (but likely December 31, 2020), subject only to an affirmation from the borrower that the borrower has a financial hardship due to the COVID-19 pandemic. (15 U.S.C. § 9056.)
- 2) Provides, pursuant to the CARES Act, that, as to federally backed mortgages securing multifamily (five or more units) properties, a lender must provide up to 90 days forbearance to a borrower who requests such forbearance during the period beginning March 13, 2020, and ending when the nationwide COVID-19 state of emergency ends or December 31, 2020, whichever is earlier, subject only to an affirmation from the borrower that the borrower has a financial hardship due to the COVID-19 pandemic and a requirement that the lender document the hardship. (15 U.S.C. § 9057.)
- 3) Requires, pursuant to the Homeowner Bill of Rights, that a lender who foreclosed on 175 or more homes in the last year must undertake a series of steps to explore loan modification and loss mitigation with a residential owner-occupant borrower who is delinquent on their home loan, prior to foreclosing on the home. (Civ. Code §§ 2923.6, 2923.7, 2923.55, 2924.9, 2924.10, 2924.11, and 2924.17.)
- 4) Specifies that a tenant is guilty of an unlawful detainer and subject to court-ordered eviction if, within three days of a demand to vacate the premises or pay rent that lawfully accrued within the last 12 months, the tenant does neither. (Code of Civ. Proc. § 1161(2).)
- 5) Specifies that a tenant is guilty of an unlawful detainer and subject to court-ordered eviction if, within three days of a demand to vacate the premises or comply with a material obligation under the lease other than the payment of rent, the tenant does neither. (Code of Civ. Proc. § 1161(3).)
- 6) Authorizes a mobilehome park to terminate the tenancy of a mobilehome owner in the mobilehome park for non-payment of rent, utility charges, or reasonable incidental service charges only when:
 - a) The amount has been due for five days;

- b) The park thereafter serves the mobilehome owner with a demand to pay the amount due or vacate the premises within three days, unless the mobilehome park owner has already been served with three or more three-day notices of this type in the last 12 months;
 - c) The mobilehome owner neither vacates nor pays within the three days given; and
 - d) The park also gives the mobilehome owner a 60-day notice terminating the tenancy. (Civ. Code § 798.56(e).)
- 7) Provides, pursuant to the CARES Act, that, as to properties subject to a federally-backed mortgage, the landlord may not seek to evict a tenant for non-payment of rent or other fees or charges for 120 days after March 27, 2020, and, thereafter, can only require the tenant to vacate upon 30 days' notice. (15 U.S.C. § 9058.)
- 8) Provides, pursuant to the CARES Act, that as to multi-family properties subject to a federally-backed mortgage, the landlord may not seek to evict a tenant for non-payment of rent or other fees or charges while the landlord is in forbearance and for 30 days afterward. (15 U.S.C. § 9057(d).)

This bill:

- 1) Makes a series of findings and declarations regarding the economic consequences of the COVID-19 pandemic and the resulting threat of widespread residential evictions and foreclosures.
- 2) Increases by tenfold the potential liability of a landlord who attempts or succeeds in evicting a tenant against the tenant's will and outside the court process before February 1, 2021.
- 3) Prohibits a landlord from retaliating against a tenant prior to February 1, 2021, for having fallen behind on rent or other payment obligations under the lease due to financial impact from COVID-19.
- 4) Extends the procedural anti-foreclosure protections of the Homeowners Bill of Rights to small landlords, as specified, until 2023.
- 5) Requires a mortgage servicer to provide the borrower with a written explanation if the servicer denies a borrower's request for forbearance on mortgage payments for a property consisting of no more than four residential

- units. Establishes an aggrieved borrower's ability to enforce these rights in court if necessary.
- 6) Requires a mortgage servicer to provide a borrower to whom forbearance is given with post-forbearance options that are consistent with the CARES Act and the guidance of a number of different specified federal agencies. Establishes an aggrieved borrower's ability to enforce these rights in court if necessary.
 - 7) Expands small claims court jurisdiction to allow landlords to sue in that forum, regardless of the total amount claimed, for any rent or other payment obligations under the lease for the period March 1, 2020, to January 31, 2021.
 - 8) Restricts public access to court files for eviction cases based on non-payment of rent filed between March 1, 2020, and January 31, 2021.
 - 9) Prohibits a court from issuing a summons on a complaint for eviction based on nonpayment of rent or other payment obligations under the lease until October 5, 2020. Requires landlords to file a case cover sheet indicating whether this prohibition applies.
 - 10) Establishes a legal framework to address circumstances where a tenant has fallen behind on rent or other payment obligations under the lease due to financial hardship caused by the COVID-19 pandemic as follows:
 - a) Provided the tenant follows specified procedures, including providing specified documentation of the hardship if the tenant is a high-income tenant, as defined, then:
 - i) Unpaid rent and other payment obligations under the lease accrued between March 1, 2020, and August 31, 2020 are converted to consumer debts and cannot form the basis for an eviction ever;
 - ii) Unpaid rent and other payment obligations under the lease accrued between September 1, 2020, and January 31, 2021, cannot form the basis for an eviction until after January 31, 2021. In addition, if the tenant pays at least 25 percent of any amount that the landlord demands after it comes due, the remaining unpaid balance is converted to consumer debt and cannot form the basis for an eviction ever;
 - b) The usual three-day window that a tenant has to respond to a demand to meet rent or other payment obligations under the lease is expanded to 15 days until February 1, 2021.

- 11) Requires landlords to provide all tenants with a notice informing them of their rights under this bill by September 30, 2020, or before or contemporaneously with the services of any notice demanding rent or other payment obligations under the lease corresponding to the period March 1, 2020, to January 21, 2021.
- 12) Specifies that any ordinance, resolution, regulation, or administrative action adopted by a city, county, or city and county in response to the COVID-19 pandemic to protect tenants from eviction is subject to all of the following:
 - a) Any extension, expansion, renewal, reenactment, or new adoption of a measure, however delineated, that occurs between August 19, 2020, and January 31, 2021, shall have no effect before February 1, 2021;
 - b) Any provision which allows a tenant a specified period of time in which to repay COVID-19 rental debt shall be subject to all of the following:
 - i) If the provision in effect on August 19, 2020, required the repayment period to commence on a specific date on or before March 1, 2021, any extension of that date made after August 19, 2020, shall have no effect;
 - ii) If the provision in effect on August 19, 2020, required the repayment period to commence on a specific date after March 1, 2021, or conditioned commencement of the repayment period on the termination of a proclamation of state of emergency or local emergency, the repayment period is deemed to begin on March 1, 2021; and
 - iii) The specified period of time during which a tenant is permitted to repay COVID-19 rental debt may not extend beyond the period that was in effect on August 19, 2020. In addition, a provision may not permit a tenant a period of time that extends beyond March 31, 2022, to repay COVID-19 rental debt.
- 13) Clarifies that local jurisdiction may extend, expand, renew, reenact, or newly adopt an ordinance that requires just cause for termination of a residential tenancy or amend existing ordinances that require just cause for termination of a residential tenancy and that provide greater protection than state law, but any provision enacted or amended after August 19, 2020, cannot apply to rental payments that came due between March 1, 2020, and January 31, 2021.
- 14) Specifies that the one-year limitation provided in subdivision (2) of Section 1161 is tolled during any time period that a landlord is or was prohibited by

any ordinance, resolution, regulation, or administrative action adopted by a city, county, or city and county in response to the COVID-19 pandemic to protect tenants from eviction based on nonpayment of rental payments from serving a notice that demands payment of COVID-19 rental debt pursuant to subdivision (e) of Section 798.56 of the Civil Code or paragraph (2) of Section 1161.

- 15) Requires the Business, Consumer Services and Housing Agency and the Department of Finance to engage with stakeholders about how to spend any future federal stimulus funding on housing stabilization.
- 16) Sunsets as of February 1, 2025, where it does not explicitly sunset earlier.
- 17) Contains a severability clause.
- 18) Contains an urgency clause.
- 19) Separate from all of the above, makes technical fixes to statewide just cause for eviction and anti-rent gouging laws.

Comments

(NOTE: For a detailed analysis of this bill, the context behind it, and how it would work, please see the Senate Judiciary Committee analysis of August 28, 2020.)

By far the most significant substantive element of this bill is the part that addresses residential evictions. That part may be briefly summarized as follows.

At its most basic, this bill provides a pathway for tenants enduring financial hardship due to the COVID-19 pandemic to remain in their homes through the end of January 2021. However, this bill does not “forgive” or “cancel” any payment obligations that a tenant has under the lease. Instead, depending on the circumstances, some or all of any unpaid amount essentially turns into consumer debt, meaning that the landlord can sue the tenant for failing to pay the money and can use any of the standard legal methods (bank levy, wage garnishment, etc.) to collect it, but the unpaid amount cannot serve as a basis for throwing the tenant out of the home.

To achieve that basic outcome, this bill operates in different phases.

- 1) *Phase One – September 2, 2020 to October 4, 2020*

Beginning on September 2, 2020, after the Judicial Council’s Emergency Rule 1 expires, landlords will once again be able to proceed with eviction cases in

court for any lawful cause – meaning a grounds for eviction that is permissible under federal law, state law, and any applicable local ordinance -- other than non-payment of rent or nonpayment of any other financial obligation under the lease. The only exception is that, whereas state law ordinarily allows landlords to evict a tenant in order to demolish a unit or substantially remodel it (subject to payment of a month's rent to compensate the tenant for relocating), under this bill, landlords can only evict for this purpose if the demolition or substantial remodel is necessary to address serious problems with the basic conditions of the unit.

Until October 5, 2020, landlords will not be able to proceed with eviction cases if the grounds for the eviction is nonpayment of rent or nonpayment of other payment obligations under the lease. This delay is intended to allow time for the courts, the Judicial Council, landlords, tenants, and the attorneys who represent them to prepare for the new rules governing nonpayment cases that will take effect in Phase Two.

2) *Phase Two – October 5, 2020, to January 31, 2021*

Beginning on October 5, 2020, in addition to proceeding with evictions for any other lawful cause as set forth in the description of Phase One, above, landlords will be able to seek to have their tenants evicted for nonpayment of rent or other charges due under the lease. However, up until the end of January 2021, such cases will be subject to the following rules designed to protect tenants with COVID-19 related financial hardships from losing their homes, at least until February of 2021.

If a landlord intends to try to evict a tenant for nonpayment of rent or other charges due under the lease, the landlord must first serve a notice giving the tenant a fifteen business day window in which to make one of the following choices: pay the demanded amount, vacate the premises, or return a declaration to the landlord, signed under penalty of perjury, indicating that the tenant cannot pay the rent in full and on time because of a COVID-19 related financial hardship. What constitutes a COVID-19 related financial hardship is both stated in this bill and included in the text of the fifteen-day notice that the landlord must provide to the tenant.

If the tenant returns the signed declaration of COVID-19 related financial hardship to the landlord within the fifteen days given, then the tenant receives protection against eviction. How long that protection lasts depends on when the unpaid rent accrued. For unpaid rent and other charges that accrued between March 1, 2020, and August 31, 2020, returning a signed declaration of

COVID-19 related financial hardship permanently protects the tenant against eviction. The tenant still owes that money to the landlord, but it becomes consumer debt: something the landlord can sue the tenant for if the tenant does not pay it back voluntarily, but not the basis for an eviction. For unpaid rent and other charges that accrue between September 1, 2020, and January 31, 2021, returning a signed declaration of COVID-19 related financial hardship only protects the tenant against eviction until February 1, 2021. However, if the tenant returns the signed declaration of COVID-19 related financial hardship and also manages, before February 1, 2021, to pay the landlord at least 25 percent of the rent still due for the September 1, 2020, to January 31, 2021 period, then the tenant is permanently protected against eviction for failure to pay the balance. That balance is not forgiven or cancelled, though. It, too, becomes consumer debt that the tenant can be sued for if the tenant does not eventually pay it voluntarily.

3) *Phase Three – February 1, 2021 - Forward*

Going forward from February 2021, tenants will once again be bound by the pre-COVID rules relating to payment of rent and other charges due under the lease, except as modified by any applicable federal law, local ordinance, and such further state legislative action as may be enacted in the meantime. Those pre-COVID rules are as follows. Tenants who do not pay their monthly rent and other charges on time as they come due must first be given at least a three-day window in which to either pay the required amount or vacate. If the tenant does not comply within the three days given, the tenant is thereafter subject to eviction. (Code of Civ. Proc. § 1161(2) and (3).) Mobilehome owners are subject to similarly strict rules, though their three-day window to pay or vacate cannot start until five days after the rent is due, and they are also entitled to 60-day notice giving them the opportunity to try to remove the mobilehome from the park or sell it. (Civ. Code § 798.56(e).)

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- *Business, Consumer Services and Housing Agency (BCSHA):* Unknown one-time workload costs likely in the thousands of dollars for the agency to engage with specified stakeholders about strategies and approaches to direct potential future federal stimulus funding. The agency would perform this duty regardless of if the national government provides the state with funds that could be used to provide relief to distressed tenants, landlords, and property owners. (General Fund)

- *Courts:* Unknown, potentially-significant workload cost pressures to the courts to adjudicate alleged violations of this measure by landlords and mortgage servicers. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and other resources. For example, the Budget Act of 2020 appropriated \$273.8 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)

By allowing rental debt recovery cases to be heard in small claims court regardless of the amount being sought, the courts would experience a reduction in fee revenue for cases that, absent AB 3088, would have been filed as a limited civil case (i.e., where the value at issue is between \$10,000 and \$25,000) or an unlimited civil case (i.e., where the value at issue is over \$25,000). Actual revenue reduction would depend on the number of cases filed in small claims court where the amount being sought is over \$10,000.

Moreover, this measure may lead to an increase in filings of small claims cases that may result in the courts diverting resources from other trial court operations to meet the higher demand and/or increasing potential delays in hearing other types of small claims cases. Alternatively, this measure may result in a reduced demand on some court resources to the extent that COVID-19 rental debt recovery cases are adjudicated more quickly in small claims court.

*Trial Court Trust Fund

SUPPORT: (Verified 8/30/20)

California Credit Union League
California YIMBY
Service Employees International Union California

OPPOSITION: (Verified 8/30/20)

Affordable Housing Management Associations
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
Apartment Association, California Southern Cities
East Bay Rental Housing Association

ARGUMENTS IN SUPPORT: In support of this bill, the Service Employees International Union of California writes:

While temporary protections have been put in place to prevent evictions, they are set to expire. Without additional action to prevent evictions, hundreds of thousands if not millions of renters and their families are at risk of losing eviction and homelessness. The dire and long-standing economic effects of mass evictions will not only be borne by those evicted, but also by our economy as a whole; the physical and psychological implications of being evicted during a global pandemic, especially amongst California's children who are already struggling with fear and uncertainty is almost unthinkable. This bill provides a much-needed state-wide solution for landlords and tenants, to prevent a wave of evictions and homelessness that will only worsen the ability for California to address and control the spread of COVID-19. AB 3088 provides a path for transitioning out of the COVID-19 emergency in a way that balances renter protections with the ability of landlords to recover what is owed to them.

ARGUMENTS IN OPPOSITION: In opposition to this bill, a group of regional associations representing rental property owners writes:

The California legislature rightfully and understandably prioritized legislation to try its best to address this issue by "balancing" the interests of tenants and owners. We do not believe we have achieved the balance necessary for everyone concerned. [...] AB 3088 would permit residential tenants that declare they are unable to pay rent due to a COVID-19 related financial distress to remain in possession for defined periods of time and ultimately pay the rental property owner past due rent on or before March 31, 2022. This is an extraordinary period of time which may cause owners to undergo extreme financial hardship. Our owners are NOT being given any financial assistance in AB 3088 or any other measure before the legislature.

Prepared by: Timothy Griffiths / JUD. / (916) 651-4113
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**** END ****