



PPMA

Professional Property Management Association of San Francisco



PPMA MONTHLY MEETING

FRIDAY, SEPTEMBER 11th, 12:30 PM

via Zoom

**The Challenges of Complying with the New Rules
and Notice Requirements Under The COVID-19
Tenant Relief Act of 2020 (AB 3088)**

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The New Law: Overview of AB 3088 (2020)

- Makes comprehensive changes to state unlawful detainer law
- Supersedes many local ordinances and orders addressing COVID-19
- Excuses certain tenant nonpayment of rent during the covered period
- Expands non-eviction remedies for collection of rent

“The COVID-19 Tenant Relief Act of 2020”

- Adds §§1179.01-1179.07 to the unlawful detainer statutes
- Applies to the “covered period”, which includes...
 - The “protected period” (March 1, 2020 through August 31, 2020), and
 - The “transition period” (September 1, 2020 through January 31, 2020).
- Existing unlawful detainers can move forward, landlords can file and serve new unlawful detainers, but...
 - No nonpayment summonses or defaults before October 5th
 - No judgments for possession before February 1st (with exceptions)

New Required Notices and How To Use Them

- Notice re: CTRA (see, CCP §1179.04). (CAA Form 400.)
 - **Important Deadline**: must serve the notice before September 30, 2020
 - Failure to serve by the deadline forfeits the right to use the below notices
- 15-Day “Protected Period” Notice To Pay Rent or Quit (§1179.03(b))
 - Applies to rent owed and unpaid from March 1st to August 31st
 - Tenant can “cure” by paying, vacating, or providing a declaration of COVID-19-related financial distress (CAA Form 401.)
- 15-Day “Transition Period” Notice To Pay Rent or Quit (§1179.03(c))
 - Applies to rent owed and unpaid from September 1st to January 31st
 - Can be “cured” the same way, except...

How Is September 2020 Different?

- Apparently the sky is orange and nighttime lasts forever now?
- It is the first month of the “transition period”
 - Failure to pay at least 25% of rent through January 31, 2021 can be a basis for eviction for nonpayment of rent. (CAA Form 410.)
 - Landlords may evict for nonpayment of this sum starting February 1, 2021.
- What if a tenant owes rent for “protected period” and “transition period” rent?
 - Serve a §1179.03(b) notice demanding, rent, possession or declaration, AND
 - Serve a §1179.03(c) notice demanding, rent, possession, declaration and 25%

Means Testing: Is My Tenant Telling the Truth?

- “High Income Tenants” must – in addition to other requirements – provide proof of income along with their declaration of financial distress
- What are the requirements to demand proof?
 - Landlords must already have “proof of income” on file. (This includes tax returns, W-2s, pay stubs, etc., which are lawfully obtained, e.g., as part of the application process, and before service of the 15-day notice.)
 - “High income” means 130% of area median income
 - Based on geography, family size, and... income!
 - Rule of thumb: a single person household in SF earns 130% of AMI if they earn 130k/year
 - 15-day notices may also demand “objectively verifiable documentation”, including letters from employers or unemployment insurance verification (CAA Form 401/410)
- Heightened Standards for Landlords:
 - Must comply with notice requirements or plead compliance
 - No expansion of civil discovery rules and attorneys’ fees to tenant for noncompliance

Interplay between State and Local Moratoria

- AB 3088 “occupies the field”:
 - “The Legislature finds and declares that this section addresses a matter of statewide concern rather than a municipal affair . . .”
- CTRA supersedes local law:
 - “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”
 - Mayor’s August 25th extension is void; Previous, July 27th extension of residential eviction moratorium (exp. August 31st) has now expired.
 - “Preston Amendment” suspended until February 1, 2021.
- Expanded “tenant retaliation” protections:
 - CTRA provides defense to *other* evictions if landlord “retaliated” by evicting because tenant had COVID-19 rental debt
- Use of Local Rent Board Forms?

How Do I Get My Money?

- CTRA does not forgive rental debt.
- Small Claims Court expanded jurisdiction
 - Landlords may file small claims actions (but no sooner than March 1, 2021).
 - Dollar limit for COVID-19 rental debt is removed.
 - Limit of two actions/year is removed for COVID-19 rental debt.
- General Civil Lawsuits:
 - Breach of contract is still available.
- Other options?

Other Laws Affecting the Current Market

- Commercial nonpayment regulations?
- Limitations on COVID-19 Construction Work
 - Prohibits suspension of water service or other utility service to any other resident in the building (with exceptions).
- Freeze on Rent Increases
 - Current emergency ordinance: passed on August 25th, expires October 24th.
- Intermediate Length Occupancy rules
 - Landlords may not lease for less than an initial one-year term.
- Price Gouging Rules