

TO: Members of the Assembly
FROM: Assembly Committee on Housing; Assembly Committee on Judiciary
DATE: April 8, 2020
RE: Judicial Council Emergency Rules on Evictions and Foreclosures

1. Introduction

As we know, the economic upheaval caused by the COVID-19 crisis is causing millions to lose income, making it difficult to pay rent and mortgage payments. Our previous Committee memo explained why the Governor's Executive Order N-37-20 did not create an eviction moratorium, and what steps tenants could take to protect themselves. On April 6, the Judicial Council adopted eleven Emergency Rules, two of which further protect tenants and property owners. This memo discusses how the Emergency Rules differ from the Executive Order, and conveys the impact of the Emergency Rules on tenants and property owners.

2. Differences between the Emergency Rules and the Executive Order

The Judicial Council's Emergency Rules differ from the Governor's Executive Order N-37-20 in that the Emergency Rules:

- Apply to residential and commercial evictions, not just residential.
- Apply to all evictions, not just those based on non-payment of rent.
- Automatically halt eviction proceedings at the beginning of the process, and omit complex procedures for tenants to provide information to landlords, the courts, and county sheriffs.
- Are in effect until 90 days after Governor lifts the pandemic-related state of emergency or until the Judicial Council repeals them, instead of until May 31st.

3. How Emergency Rule #1 protects residential & commercial tenants

Ordinarily, to evict a tenant, a landlord files a complaint with the court.¹ The court then issues a summons to the landlord.² The landlord serves the tenant with the summons and complaint, which initiates a five-day period for a tenant to file an answer with the court. A tenant who doesn't answer in time loses their case by default, and the sheriff will lock them out soon after. If the tenant does file an answer in time, the court sets a date for trial. Emergency Rule #1, which applies to both residential and commercial tenants, short-circuits this process by:

- Prohibiting courts from issuing a summons in any new eviction case. The tenant isn't required to answer and the new eviction case can't proceed.

¹ The complaint is a document that alleges how the tenant violated their rental agreement.

² The summons is a document which tells the tenant to file an answer to the complaint within five court days, or else lose by default.

- Prohibiting courts from entering a default, in which the tenant automatically loses. Any existing case where the tenant has not yet filed an answer can't proceed.
- Postponing eviction trials by at least 60 days. Any court-ordered eviction in an existing case where the tenant has filed an answer will be delayed.

The only exception to these protections is if the court finds *on the record* that an eviction “is necessary to protect public health and safety,” say, because there is a domestic abuser in the home. Before issuing a summons and allowing an eviction case to proceed, a judge must create a written court record of why, if what the landlord alleges is true, the tenant might have to be evicted for public health and safety reasons. This is a lot of work for a judge, and most attorneys are unlikely to mislead a judge who is making findings on the record. These requirements should prevent frivolous or fraudulent evictions, while still allowing legitimate cases to proceed.

4. What Emergency Rule #1 does *not* do for residential & commercial tenants

Emergency Rule #1 does not do any of the following:

- Provide any means for tenants to become current on their back rent and avoid eviction after Emergency Rule #1 expires. Tenants should continue to pay their rent if they can afford to.
- Prevent landlords from asking tenants to pay rent and otherwise follow their rental agreements.
- Prevent landlords from serving tenants with notices to pay rent or follow their rental agreements. Such notices are the last step before an eviction lawsuit.
- Prevent landlords from filing eviction lawsuits. Courts will likely resume issuing 5-day summons after Emergency Rule #1 expires, allowing these lawsuits to then proceed.
- Prevent sheriffs from locking out tenants who already have eviction judgments entered against them.

Tenants should research what additional eviction protections their local government has put into place. Low-income tenants may be eligible for free legal services through local legal aid nonprofits. A list is available at <https://lawhelpca.org>.

5. How Emergency Rule #2 protects property owners from judicial foreclosure

Emergency Rule #2, which addresses foreclosures, places a stay (a temporary halt) on all foreclosure cases in the courts, regardless of what stage they are at, until the Rule expires. Put another way, the courts cannot be used to foreclose on a mortgage while Emergency Rule #2 is in effect. There is, as with Emergency Rule #1, an exception for public health and safety.

6. What Emergency Rule #2 does *not* do for property owners

Emergency Rule #2 tolls the statute of limitations, so that lenders will not run out of time to file foreclosure lawsuits while the Rule is in effect. In addition, Emergency Rule #2 does not:

- Halt non-judicial foreclosures, the method by which the overwhelming majority of foreclosures in California are conducted. In a non-judicial foreclosure, the lender serves the property owner with specific notices and records them at the county recorder's offices. The last such notice, the Notice of Sale, announces the date on which the property will be auctioned. There is generally no court involvement in this process.
- Halt foreclosures on judgment liens.

Urgency legislation may be needed to address these situations.

7. Conclusion

Please feel free to contact either Committee chair or staff with any questions or feedback.