



CORONAVIRUS GUIDANCE

For Property Management

April 14, 2020

COVID-19 for California

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A photograph of a modern glass skyscraper at night, with interior lights glowing and reflecting on the glass facade. The building is the background for the top half of the image.

CORONAVIRUS GUIDANCE

For Property Management

Themes

- Manage Your Residents Expectations
- Be Flexible
- Communicate
- Fluid and Ever Changing Situation
- Creativity
- Commonsense
- Manage OUR Expectations

COVID-19

- Per Wikipedia: Coronavirus disease 2019 (COVID-19) is an infectious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The disease was first identified in December 2019 in Wuhan, the capital of China's Hubei province, and has since spread globally, resulting in the ongoing 2019–20 coronavirus pandemic.
- Common symptoms include fever, cough, and shortness of breath. Other symptoms may include fatigue, muscle pain, diarrhea, sore throat, loss of smell, and abdominal pain.
- The time from exposure to onset of symptoms is typically around five days, but may range from two to fourteen days. While the majority of cases result in mild symptoms, some progress to viral pneumonia and multi-organ failure.
- John Hopkins University reports: as of April 13, 2020, in the United States more than 547,000 cases having been reported, resulting in more than 21,662 deaths with 2,935,006 individuals tested.
- As of April 14, 2020, California has 23,931 confirmed cases with 715 deaths.

COVID-19's Impact on California

- As of April 13, 2020, the US Department of Labor revealed that 925,450 Californians filed initial unemployment insurance claims during the week ending April 4. This makes for a record-breaking three-week period during which nearly two million claims were filed in California, representing roughly 10% of the labor force.
- State of California reports over 17,466,000 employees have been immediately impacted by COVID-19.
- April Rents - The National Multifamily Housing Council (NMHC) found a 69 percent of households paid rent through April 5th. Compared to 82 percent had paid by the same time last year and 81 percent had paid by March 5th.

Operations

- Leasing
- Maintenance Requests
- Amenities
- Laundry Facilities
- Mail – Accepting Packages?
- Residents – Testing Positive for COVID-19
- Residents Not Paying Rent
- COVID-19 Financial Impact
- CARES Act
- California Executive Orders
- Judicial Council – Courts Policy Making Board
- Cities and Counties - Moratorium Ordinances
 - Late Fees
 - Resident's COVID-19 Impact re Notice and Evidence to Landlord
 - Repayment Deferred Rent
 - Individual Cities and Counties
- The Future

Leasing/Showing Units

- The world has not completely shut down, believe or not units continue to be leased
- Offer Virtual Tours
- Use Facetime to show apartments
- If prospects absolutely need to view the apartment, check with your supervisor, is this something they are agreeable. If so, practice social distancing. No more than 3 individuals in the unit at one time. Be reasonable and flexible. If not, advise the prospect we cannot physically show the unit at this time. Offer to take pictures and email or a virtual tour.
- Leases can be signed via web portals
- Deposits can be paid electronically

Maintenance Requests

- Communicate, Communicate, Communicate with your residents. Advise the priority of emergency repairs. Keep them aware of the situation. Ask for access at a specific date and time. Ensure your maintenance vendor/person is prompt. If not, advise the resident. Its okay to tell the resident your maintenance will be late by x minutes/hours. Its okay some repairs take longer than expected. Residents understand but keep them in the loop. Prior to any work being perform, manager should ask residents if they are sick prior to any employee entering the unit.
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- Emergencies – Landlords are continuing to handle emergency responses. Items such as running water or smell of gas, no heat, or no electricity. Items that could cause further damage. These repairs must be resolved.
- Not Emergency – A repair not jeopardizing the immediate health or safety of your residents. Perhaps touch up painting or shampooing the carpet of an unit. Those can wait until the shelter in place orders are lifted. Advise your residents that these items will be completed after the local emergency is resolved. Perhaps you schedule the actual work for a date in May or June. If the date comes and the local emergencies still exist, continue the repair date.
- To protect employees and vendor safety, only address critical and safety repairs
- Manage your residents' expectations. That is the key to area.
- COVID-19 Quarantined Residents or Isolated and Testing Positive. Unless an emergency, all repairs should wait until the shelter in place orders are removed.

Office and Maintenance Staff

- Practice Social Distancing
- Employees wash hands with soap and water often and for at least 20 seconds
- Staff should carry hand washing supplies and practice safe hygiene
- Employees are required to wash hands for 20 seconds before and after entering and exiting occupied and while turning apartments
- While performing work in occupied apartments employees shall wear gloves
- When repairs are required follow all CDC and Cal OSHA guidelines
- Employees should access only the areas needing repairs
- If offices require more than one person in the office, keep at least 6 feet apart. If one staff can perform the job duties, stagger their schedules

Amenities

- Follow the CDC and your County Health Department's guidelines.
- If you are unable to follow those guidelines, then you must close the amenity. Many gyms, swimming pools and event centers are temporary closed.
- If not done so, send your residents courtesy notices. Manage expectations.
- Credit or Not to Credit for Amenity closures. At this point in time, due to government ordered closures or guidelines, you should not be mandated to provide rent credits for amenities being closed.
- Your NAA Community Policies, Rules and Regulations Addendum at paragraph 1, states if amenities are closed, a resident is not entitled to a discount or recompense. Since these are unchartered times, we will see if the courts uphold this paragraph.

Laundry Facilities

- Laundry Room Facilities
- Per the Governor's order, laundromats and laundry services are considered essential services. As such, unless the Governor changes his order, your laundry facilities should remain open.
- Consider implementing a more frequent cleaning schedule.
- Implement social distancing.
- If you must close the laundry facility, that is okay. That is your decision within the confines of the CDC and your County Health Department Officer.

Mail/Packages – Accepting?

- Unless your lease requires acceptance of packages, you are not required. Most cases the acceptance of packages is an amenity.
- Ask your residents to direct ship all packages to themselves or an alternate address.
- You are eliminating points of contact.
- Inform your residents if packages are not being accepted by the business office.

Resident's COVID-19 Testing Positive

- What happens if a resident has tested positive for COVID-19?
- Residents are not required to advise landlords if they test positive. However, hopefully those residents self-quarantine themselves for the safety of others and themselves.
- What if resident tells us they tested Positive. Do we have an obligation to advise other residents? NO. If a resident advises they have COVID-19 virus, we do not have a duty to disclose to other residents. Moreover, if we disclose a medical condition about a resident, we face liability. It's a private fact that should not be disclosed. If the resident advises others, that is their choice.
- What if we observe the infected resident not self isolating? Call the police. Let the police resolve the situation.
- What if we have residents ignoring the County Health Department Officers' orders? Residents are having gatherings. Call the police. Your local police has the power to cite individuals violating their County Health Department's Officers' orders.
- Do we have liability with the spread of COVID-19. Doubtful. Liability to residents for COVID-19 exposure seems remote. More likely there will be litigation whereby employees develop COVID-19 if as a result of their employment.
- At this point in time, those employees with minimal public contact and typical office setting, are thought to have Lower Risk Exposure (lowest possible level).

Residents Not Paying Rent

- Communicate with Your Residents.
- Ask residents how they are doing. Show concern and passion.
- Ask if COVID-19 impacted them financially. Advise that no rent has been received. If COVID-19 has not impacted their lives, the rent has not been received. Perhaps they forgot or thought their roommate paid the rent.
- If the resident has been impacted by COVID-19 financially, ask them to provide a written statement and show documents evidencing the impact. The documents likely entitle the resident to a rent deferral. Advise it does not forgive the rent but allows for a brief pause.
- Ask if they have filed for unemployment insurance.
- Advise residents to seek city and county websites for financial assistance. There are organizations helping like www.needhelppayingbills.com
- Partial Payments – Determine if the resident can make a partial payment. In the end, partial payments will help both residents and landlords when this is over. Perhaps residents can pay 50% of the rent. You have to ask!
- Consider Promise to Pay Agreements.
- Consider applying security deposit.
- Extreme but consider a small claims action to recover the rent
- If no response from the Resident, send letter stating no rent received and like to discuss.
- Again for those residents with no response or communication, some landlords are serving 3 day notices

Continued Residents Not Paying Rent

- Take each resident's case separately and analyze separately. Each turns on a different set of facts.
- Bottom line - we want to retain the residents. How best can be accomplish our goals of rent collecting vs keeping the resident as a tenant.
- Am I required to notify the residents of the any Rent Moratorium Ordinances. Only a few cities are requiring landlords to actively notify their residents. However, this could change.
- Some cities have penalties for landlords who have knowledge the resident has been financially impacted and serve a 3 day notice or initiate an eviction filing. Discussed later, the courts are open for emergency matters and are not proceeding with evictions unless to protect public health or safety.

Continued Residents Not Paying Rent

- Remember – No ordinance or State law has waived rent.
- Rent is deferred for residents impacted by COVID-19.
- Work with the residents.
- Communicate (email or telephone) with your residents. Enter into a dialogue with your residents.
- Maybe the tenant can make a partial payment. Good time to accept at this point.
- Work out a plan, payment or move out date. Ideally, have the resident agree in writing to that plan.
- Be flexible

Documents Supporting Impact COVID-19

- What type of documents are necessary for a resident to support COVID-19 financial impact?
- This is not an exhaustive list:
- Letter from employer
- Unemployment application filing
- Medical expenses
- Increase childcare expenses because children are at home
- Documents supporting a resident caring for another who has COVID-19
- Bank account information
- SBA or city or county emergency disaster applications
- Evidence the employer or employer works for a non-essential business, hairdresser, restaurant, dental office, etc.
- There are many more documents supporting financial impact. In assessing the situation, you will need to be reasonable and flexible

CARES ACT

- **Section 4024. Temporary Moratorium on Eviction Filings**
- Properties Covered
- Applies to Federally Backed Mortgages, (such as Freddie Mac, Fannie Mae, FHA, HUD, VA)
- Also applies to Section 8, rural housing voucher program, Low-Income Housing Tax Credit properties and Violence Against Women Act properties.
- The property does NOT have to request a forbearance.
- Moratorium
- Subject properties may not serve 3 day notices, or file unlawful detainers or evictions
- May not charge late fees
- Ends: July 27, 2020 (120 days)
- Residents
- Applies to All Residents. Does not matter whether COVID impacted or not.

California Executive Orders

- N-28-20 – March 16, 2020 – California Governor authorizes local governments to pass their own bans on residential or commercial evictions. Basically, allowing local governments to determine if, and under what conditions, they wish to limit evictions in their jurisdiction. The Order also retroactively approves actions taken on or after March 4, 2020. This EO is operative through May 31, 2020, unless extended.
- Approximately 60+ cities and counties passed their own Eviction Moratorium ordinances. (More on that later)
- N-37-20 – March 27, 2020 – The governor, under pressure from tenant groups believing the governor had not accomplished enough, issued a very confusing order. The EO allowed tenants to receive a 60 day Summons (as opposed to a 5 day) if the resident could establish they were financially impacted by COVID-19. Additionally, the Order stated Sheriff Offices not perform a lockout if a tenant was impacted by COVID-19. This left the courts (at the outset of a complaint) and the sheriff to determine who was or was not financially impacted by COVID-19. Many news agencies reported this EO as an eviction moratorium order. It is not.
- The EO does not waive rent. Order expires on May 31, 2020, unless extended.
- The order requires:
 - 1) Tenants must declare in writing, no more than 7 days after the rent comes due, that they cannot pay all or part of their rent due to COVID-19.
 - 2) Written documentation is due at the time of repayment, June 1, 2020, unless the order is extended.
- <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-EO-N-37-20-text.pdf>

Judicial Council Emergency Rule #1

- On April 6, 2020, the California Judicial Council (policy making committee of the Courts) passed Emergency Rule #1 (ER #1).
- The new rule remains in effect for 90 days after the Governor declares that the state of emergency related to COVID-19 is lifted, or until amended or repealed by the Judicial Council. Currently, the Governor's executive order is set to expire on May 31, 2020. Meaning, at best, ER #1 is in effect until September 1, 2020. Remember that date.
- The Judicial Council has instructed each and every court in California:
- 1. Not issue a summons on an eviction case unless, in the judge's discretion, and on the record (for appeal purposes), the eviction is necessary to protect public health and safety.
- 2. Not enter default to default judgment unless the eviction is necessary to protect public health and safety.
- 3. If a defendant has answered the eviction complaint, the court may not set a trial earlier than 60 days after a request for trial is made (current law is 20 days) unless the court finds the eviction is necessary to protect public health and safety.
- 4. All trials as of April 6, 2020 must be continued at least 60 days.
- This new rule does not distinguish between commercial or residential tenants. The rule does not distinguish between those affected (or not affected) by COVID virus.
- Moreover, ER #1 applies to any and all eviction cases. Its not relevant whether the rent is due before March 4, 2020 or whereby tenants not complied with a material term of the lease agreement.

Judicial Council Emergency Rule #1 – Page 2

- Landlords may start eviction proceedings for only those tenants who are affecting public health and safety. The Judicial Council did not define “public health and safety.” This will be determined by judicial interpretation leading to inconsistent results.
- As the Emergency Rule is currently drafted, landlords will not be able to begin an eviction for failure to pay rent or a material lease violation (not related to public health and safety) until after September 1, 2020.
- Essentially, the Judicial Council has delayed each and every eviction in the State until after September 1, 2020.
- Meaning for those residents who did not pay rent pre-COVID (March 1st rent), tenants will owe landlord’s 7 months of rent prior to the starting of the eviction process. Any court and sheriff backlogs will be felt for months. Prior to the COVID-19 impact, sheriff offices were taking 4 weeks or longer in providing lockouts.

City/County Eviction Moratorium Ordinances

- In response to first EO affecting rents on March 16, 2020, approximately 65 cities and counties passed their own Eviction Moratorium Ordinances.
- Which applies: EO N-37-20 (March 27th) or the City or County Ordinance? Depends upon the language in the City or County ordinance, but more likely than not, the City/County will apply as more restrictive against the landlord.

Continue City/County Ordinances

- The Cities continue to evolve and modify their ordinances. You must continuously verify with your city as to their most recent ordinance.
- If a city does not have an Eviction Moratorium ordinance, then EO N-37-20 applies. See above under Executive Orders.
- If your City has an Eviction Moratorium, you must read their ordinance and apply to your situation.

Continue City/County Ordinances – Rent/Late Fees

- **Does a Tenant Remain Obligated to Pay Rent, Late Charges, and Late Fees?**
- To date, the ordinances do not relieve a tenant, who may be otherwise prohibited from being evicted, of its obligation to pay rent. In fact, many ordinances expressly provide that the tenant is not excused from paying rent. The ordinances generally further provide that landlords may seek back rent after the local emergency is lifted or after some period of time thereafter (e.g., 3, 6 or 12 months after the local emergency is lifted).
- While the ordinances are uniform in providing that rent remains payable by a tenant, the ordinances are uneven in their treatment of that tenant's obligation to pay late charges and fees. Roughly half the ordinances are silent on the issues of late charges and fees, and it is unclear whether such charges may be assessed.
- The others expressly provide that a landlord may not charge or collect late fees or charges for rent that is delayed for an eviction-protected tenant. Presumably delayed rent can begin to accrue late charges and fees when a landlord is able pursue eviction remedies after the local emergency is lifted.

Continue City/County Ordinances – Notice and Evidence of COVID-19 Impact

- Notice to Landlord Of Inability to Pay Rent
 - Most Ordinances require within 7 days after rent is due.
 - Some Ordinances require before rent is due.
- Written
 - Most allow text or emails if Landlord had previously communicated to Resident
- Evidence of COVID-19 Impact Due
 - Most Ordinances allow when repayment terms are due
 - Some Ordinances require when Notice of COVID-19 Impact

Continue City/County Ordinances - Repayment

- Most Ordinances allow residents time to repay the deferred rent. Such as, 3, 6 or 12 months after the local emergency is lifted.
- Some Ordinances are silent as to when the deferred rent is repaid, stating the amount is repaid when the emergency is terminated

Continue City/County Ordinances – Similarities/Differences

- Some law firms have tracked the differences between the cities. Todd Rothbard has done a very good job in tracking Northern California cities. His website is <https://toddrothbardlaw.com/>
- Our firm has tracked the Southern California cities.
- Some local apartment associations have compiled the similarities and differences.
- General searches on websites provide information. Only issue since the information changes daily, some information previously reported may not be accurate any longer.

The Future

- Continues to Change on a Daily Basis
- Cities and Counties Continue to modify their Ordinances. As for example, cities are not pushing for no rent increases during the emergency. Cities of Los Angeles and Oakland have implemented rent freezes. Other cities are joining the rent freeze.
- California Legislature due to return on May 4th. In the meantime, the legislators have been busy crafting bills regarding rent. We shall see what passes and becomes law.

Questions?

We will take some questions.

However, in the event, I do not answer your question, you can email me directly.

Thank You

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