

EVICTIION MORATORIA, EMERGENCY POWERS AND NEXT STEPS

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WHERE WE STARTED

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- Impact of March Shelter in Place Orders
 - Shut down of businesses resulting in widespread unemployment
 - Cities and counties respond declaring states of emergency and invoking the California Emergency Services Act (Govt Code 8550)
 - Governor's Executive Order N-28-20 - waives state law preemption for local eviction protections

WHERE WE STARTED

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- Local Government Responds to Emergency
 - Cities and counties adopt various tenant protections ordinances that:
 - Prohibit residential and commercial evictions for nonpayment of rent
 - Duration of ordinances varies – length of state of emergency, until Governor’s order repealed, set time period
 - Some local ordinances prohibit rent increases during state of emergency
 - Some local ordinances require tenants and landlords to enter repayment plans
 - Set dates for tenants to repay unpaid rent –most common, within a certain time after state of emergency is lifted

WHERE WE STARTED

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- Issues and Concerns with local ordinances
 - ▣ Proper exercise of police powers
 - ▣ Enhanced police powers under Emergency Services Act
 - ▣ Eviction moratorium duration – does a longer duration result in a taking
 - ▣ Impairment of contracts claims
 - ▣ State law preemption- Governor's Executive Order

WHERE WE STARTED

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- Preemption of City ordinance by County ordinances
 - ▣ Counties adopt ordinances that cover incorporated areas of cities based on authority from an Attorney General decision
 - ▣ Overlapping ordinances creates general confusion for tenants and landlords

- Judicial Council Order – Courts prohibited from issuing summons or default judgments for unlawful detainers except in limited circumstances

- Prohibits courts from taking action on judicial foreclosures

WHERE WE STARTED

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▣ Federal Actions

- CARES act prohibits evictions in federally subsidized housing including LIHTC, and federally insured housing through June 2020
- HUD suspends evictions and foreclosures for limited period of time
- Foreclosure and foreclosure related evictions suspended for federally insured mortgages
- CDC Residential Eviction Moratorium- Federal District Courts in Texas and Ohio have found unconstitutional

CHALLENGES TO LOCAL ORDINANCES

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- San Francisco's Eviction Moratorium that prohibits any eviction of nonpayment of rent during emergency challenged in court.
 - Court upholds moratorium finding it is not a taking, is not preempted by Emergency Services Act and is a permissible exercise of police power. Decision is appealed but appeal is later withdrawn
- City of Los Angeles Eviction Moratorium challenged
 - Motion for preliminary Injunction is denied. Court found moratorium does not impair contract rights and was a reasonable action by City to address public health emergency.

STATE EVICTION PROTECTIONS: AB 3088 AND SB 91

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- State adopts AB 3088 providing statewide eviction protections for tenants suffering COVID 19 related financial distress
 - ▣ Landlords cannot ever evict for nonpayment of rent owed between March 1, 2020 and August 31, 2020
 - ▣ Landlords cannot evict for nonpayment of rent owed between September 1, 2020 and June 30, 2021 if tenant pays 25% of the rent owed during that time no later than June 30, 2021
 - ▣ Tenants must sign a declaration of COVID 19 financial distress to take advantage of protections
 - ▣ Unpaid rent is still owed but can only be collected as a consumer debt

STATE EVICTION PROTECTIONS: AB 3088 AND SB 91

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- Additional tenant protections:
 - ▣ No late fees on unpaid rent
 - ▣ Unpaid rent cannot be used a negative factor for tenant screening
 - ▣ Unpaid rent debt cannot be sold to collection agency
 - ▣ Security deposit cannot be used for unpaid rent without tenant consents
- AB 3088 and SB 91 only apply to residential tenancies. No statewide protections for commercial tenancies.

STATE EVICTION PROTECTIONS: AB 3088 AND SB 91

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- Preemption of Local Ordinances
 - Local ordinances, regulations or actions to protect tenants in response to COVID-19 pandemic adopted between August 19, 2020 and June 30, 2021 are ineffective before July 1, 2021
 - Time periods for commencement of repayment of rental debt in local ordinances is the earlier of the date in the ordinance or August 1, 2021
 - Repayment period may not extend beyond August 31, 2021 (was intended to be August 31, 2022 and is to be corrected in subsequent legislation)

RESIDENTIAL RENTAL ASSISTANCE

SB 91

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- SB 91 implements the State's rental assistance program pursuant to the Federal Emergency Rental Assistance Program (ERAP)
- Eligible Households must be:
 - Eligible for unemployment or suffered a significant reduction in household income or financial hardship due to COVID-19
 - Demonstrate a risk of experiencing homelessness or housing instability
 - Have incomes at or below 80% of AMI
- State Priorities:
 - 1st households with incomes at or below 50% of AMI
 - 2nd households in communities disproportionately impacted by COVID-19
 - 3rd households with incomes at or below 80% of AMI.

RESIDENTIAL RENTAL ASSISTANCE

SB 91

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- State Program-\$1.4 billion:
 - ▣ Landlords can receive rental assistance directly but only receive 80% of amount owed by tenant between April 1, 2020 and March 31, 2021 and must release tenant from remaining 20% owed.
 - ▣ If landlord will not participate in program, tenant may receive assistance directly but will receive only 25% of the rent owed between April 1, 2020 and March 31, 2021.
 - ▣ Funds can also be used for utility payments
 - ▣ Cities taking an allocation of ERAP from the State must administer their direct ERAP funds consistent with State program.

COMMERCIAL TENANT PROTECTIONS

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- ❑ No state legislation protecting commercial tenants.
- ❑ Governor's Executive Order N-28-20 as recently extended by Order N-03-21 through June 30, 2021 eliminates state preemption of local ordinances that limit commercial evictions for nonpayment of rent because of COVID-19 pandemic.
- ❑ Local government can adopt protections for commercial evictions through June 30, 2021.
- ❑ State law prohibits commercial rent control.

COMMERCIAL TENANT PROTECTIONS

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- Cities and Counties have adopted various protection measures that :
 - ▣ Prohibit commercial evictions for nonpayment of rent that is COVID related. Duration depends upon local ordinance.
 - ▣ Require repayment of unpaid rent by a set period of time
 - ▣ May prevent rent increases during state of emergency

WHERE TO WE GO FROM HERE

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- ❑ San Francisco study finds that small businesses in the City owe between \$175 and \$400 million in unpaid rent
- ❑ Depending upon the local ordinances in place, rent for commercial properties could be due as early as July
- ❑ Potential for significant number of commercial vacancies as pandemic eases, restrictions on evictions are lifted and small businesses are unable to pay unpaid rent.
- ❑ Potential surge of residential evictions as evictions protections of SB 91 expire.

OPTIONS FOR LOCAL GOVERNMENT

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- Local ordinances extending commercial and residential eviction moratoria – do continuing economic impacts justify extension once pandemic risks are reduced
- Local ordinances setting extended time period for commercial tenants to repay rent owed
- Cities and Counties use portion of Federal Stimulus funds to provide commercial rent relief either as low interest loans or grants