



EVICTIION LIMITATIONS

JUDICIAL COUNCIL EMERGENCY RULES

GOVERNOR'S EXECUTIVE ORDER

COUNTY EVICTION DEFENSE ORDINANCE

City Council Meeting
April 7, 2020

Sue Gallagher, City Attorney
City Attorney's Office

Background

- Three separate measures now in effect to address residential evictions during the time of the COVID-19 pandemic
 - California Judicial Council Emergency Rules
 - Governor's Executive Order N-37-20
 - Sonoma County COVID-19 Eviction Defense Ordinance

Timeline

- March 16, 2020: Governor issues Executive Order N-28-20, authorizing local governments to regulate residential evictions arising out of the COVID-19 pandemic
- March 24, 2020: County of Sonoma adopts the COVID-19 Eviction Defense Ordinance
- March 27, 2020: Governor issued Executive Order N-37-20, placing a statewide moratorium on residential evictions arising out of the COVID-19 pandemic

Timeline

- April 6, 2020: Judicial Council issued Emergency Rules suspending eviction and foreclosure proceedings, except as necessary for public health and safety

Potential for Preemption?

- Preemption unlikely
- Judicial Council Rules and Executive Order leave room for local regulation of residential evictions
- Local regulations must not be inconsistent
- What practical effect?

Judicial Council Emergency Rules

- Judicial Council issued Emergency Rules on April 6, 2020
- Rules suspend “eviction and foreclosure proceedings to protect Californians from losing their homes during the COVID-19 pandemic”
- Rules are effective immediately
- Rules remain in effect until 90 days after termination of the State of Emergency

Judicial Council Emergency Rules

- Emergency rule 1: Unlawful Detainers
 - No summons will be issued for unlawful detainer actions, unless necessary to protect public health and safety
 - No entry of any default in an unlawful detainer actions, unless necessary to protect public health and safety
 - Unlawful detainer trials continued for 60 days, unless necessary to protect public health and safety

Judicial Council Emergency Rules

- Emergency rule 2: Foreclosures
 - All foreclosure actions are stayed, unless action necessary for public health and safety
 - Statutes of limitations are tolled
 - The period for electing or exercising any rights under the foreclosure statutes are extended

Executive Order N-37-20

- Governor issued Executive Order N-37-20 on March 27, 2020
- “Builds on previous executive order authorizing local governments to halt evictions for renters impacted by the pandemic”
- Prohibits evictions of residential tenants affected by COVID-19 through May 31, 2020

Executive Order - Key Provisions

- Eligibility for tenant protections:
 - Prior to Executive Order, tenant has paid rent under an agreement with the landlord
 - Tenant now unable to pay rent for reasons related to COVID-19
 - Tenant notifies landlord before rent is due or within 7 days after rent is due, that tenant is unable to pay
 - Tenant retains verifiable documentation of inability to pay due to reasons related to COVID-19

Executive Order - Key Provisions

- Unable to pay rent due to COVID-19, includes:
 - Tenant was sick with suspected or confirmed case of COVID-19
 - Caring for a household or family member with suspected or confirmed case of COVID-19
 - Lay-off, loss of hours or other income reduction resulting from COVID-19, State of Emergency or related governmental response
 - Caring for child whose school was closed due to COVID-19

Executive Order - Key Provisions

- If tenant meets the above criteria,
 - Extends, by 60 days, tenant's time to respond to the initiation of an eviction action
 - Prohibits enforcement of any writ to evict a residential tenant for nonpayment of rent
 - Does not relieve tenant of obligation to pay unpaid rent

Executive Order - Key Provisions

- Applies state-wide
- No action required by local government
- Implemented through private civil actions filed in Superior Court

County Ordinance

- Pre-dated Governor's new Executive Order
- Provides different procedures and remedies for residential tenants facing possible eviction
- Parallel standards for eligibility for protection

County Ordinance

- On March 24, 2020, the Sonoma County Board of Supervisors unanimously adopted the COVID-19 Eviction Defense Ordinance
- Ordinance provides temporary relief for tenants who can demonstrate that their inability to pay rent is due to the impacts of the coronavirus pandemic

County Ordinance

- Urgency ordinance, and effective immediately
- Applies in incorporated and unincorporated areas
- Applies to all residential rentals, including mobile homes

Ordinance – Key Provisions

- Eligibility for tenant protections:
 - Tenant demonstrates, through documentation or other objectively verifiable means, that:
 - A failure to pay rent results from:
 - A substantial loss of income, or
 - Substantial out-of-pocket medical expenses
 - Associated with the COVID-19 pandemic, or
 - Associated with any local, state, or federal government response to the COVID-19 pandemic

Ordinance – Key Provisions

- The substantial loss of income may be from:
 - Job loss
 - Layoffs
 - A reduction in the number of compensable hours of work
 - A store, restaurant, office or business closure
 - A substantial decrease in business income caused by a reduction in open hours or consumer demand
 - The need to miss work to care for a home-bound school-age child or a family member infected with coronavirus
 - Other similarly-caused loss of income that resulted from the COVID-19 pandemic

Ordinance – Key Provisions

- The tenant must share the documentation with the landlord for the purpose of supporting the landlord's claim for mortgage relief
- The Ordinance itself does not create a path for mortgage relief, as mortgage relief is outside the authority of local government
- The prohibition against evictions also applies to a landlord's action that constitutes constructive eviction

Ordinance – Key Provisions

- If tenant meets the above criteria:
 - Ordinance prohibits eviction for failure to pay rent
 - The prohibition against evictions also applies to any landlord action that constitutes constructive eviction

Ordinance – Key Provisions

- Remedies in the event of violation:
 - Notice of eviction is void
 - Tenant may use ordinance as affirmative defense against unlawful detainer action
 - Tenant may file civil action against landlord for injunctive relief and/or treble damages
 - Damages may include damages for mental or emotional distress, but these damages will not be trebled absent knowing violation or reckless disregard of the Ordinance

Ordinance - Key Provisions

- The Ordinance does not relieve the tenant of the obligation to pay rent, nor does it restrict a landlord's ability to recover rent due
- The Ordinance provides a sixty-day period after the termination of the local Public Health Emergency for payment of all unpaid rent

Ordinance – Key Provisions

- Currently in effect throughout the County, in both incorporated and unincorporated areas
- No enforcement action or implementation required by the cities
- Does not preclude additional or alternative action by cities, but consistency is urged

Practical Implications

- Some uncertainty as to how the three measures will work together
- Different scopes, different tools, different timeframes
- Some difficulties in administration, but can be aligned

QUESTIONS?