



EVICTIION LIMITATIONS

GOVERNOR'S EXECUTIVE ORDER

COUNTY EVICTION DEFENSE ORDINANCE

City Council Meeting
April 7, 2020

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Background

- On March 16th, the Governor issued an Executive Order authorizing local governments to regulate residential evictions arising out of the coronavirus pandemic
- On March 24th, County of Sonoma 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

Background

- On March 27th, Governor issued an Executive Order establishing a statewide temporary moratorium on residential evictions related to the pandemic
- This item is to provide a report to Council regarding the provisions and operation of both the County Ordinance and the two Executive Orders

Background

- Preemption?
- Executive Order may leave room for local regulation of residential evictions
- Local regulations must not be inconsistent
- Independent regulations, both effective?
- Most restrictive applies?

Initial Steps

- Governor issued Executive Order N-28-20 on March 16, 2020
- Suspended state law restrictions on the power of local governments to limit residential or commercial evictions when the basis for the eviction is nonpayment of rent arising out of a substantial decrease in income or substantial medical expenses caused by the COVID-19 pandemic or by any local, state or federal government response to COVID-19

Initial Steps

- The Order itself did not limit evictions
- Left action to the discretion of local governments
- In effect through May 31, 2020, and may be extended

Local Responses

- In response to the Executive Order, more than fifty jurisdictions adopted regulations to protect tenants from evictions due to the tenant's inability to pay rent as a result of COVID-19
- Regulations varied from jurisdiction to jurisdiction
- Many jurisdictions took no action

New Executive Order

- 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 notifies landlord before rent is due or within 7 days after rent is due, that tenant is unable to pay due to reasons related to COVID-19
 - Tenant retains verifiable documentation of inability to pay

Executive Order - Key Provisions

- Unable to pay rent due to COVID-19, including:
 - 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

- 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
- Tenant must satisfy the above requirements
- Does not relieve tenant of obligation to pay unpaid rent
- Applies state-wide

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
- Urgency ordinance, and effective immediately
- Applies in incorporated and unincorporated areas

Ordinance – Key Provisions

- Eviction for failure to pay rent is prohibited if:
 - Tenant demonstrates, through documentation or other objectively verifiable means, that:
 - The 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

- 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
- Applies to all residential rental property, including mobile homes

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

QUESTIONS?