



Frequently Asked Questions: Governor Newsom's Executive Orders on Evictions During the COVID-19 Pandemic

Since the COVID-19 pandemic has taken root in California, Governor Gavin Newsom has issued two executive orders related to evictions of residents who have been affected by the COVID-19 pandemic. These executive orders have raised many questions for housing providers. The most common of those questions are addressed in this Industry Insight.

1. I've heard conflicting things about the Governor's executive order. Sometimes I hear that he's put a moratorium on evictions, and other times I hear he hasn't. What's the truth?

The first thing to understand is that the Governor has issued two executive orders related to evictions.

The [first executive order](#), issued on March 16, 2020, did not place a moratorium on evictions. Instead, it clarified the authority of local governments by waiving any state landlord-tenant statute that would otherwise interfere with a local government's ability to enact a moratorium to protect residents financially affected by the COVID-19 pandemic from being evicted for non-payment of rent. For more information about the local governments that have enacted eviction restrictions related to the COVID-19 pandemic, visit CAA's [COVID-19 Resource Center](#).

The [second executive order](#), issued March 27, 2020, took a more direct approach by directly mandating protections for residents financially affected by the COVID-19 pandemic. The specifics of those protections are discussed below.

2. What protections did the Governor's March 27 executive order mandate for residents financially affected by the COVID-19 pandemic?

The Governor's order provides two protections for residents who are financially affected by the COVID-19 pandemic. See Question 3 for specifics about who qualifies for these protections.

First, the order provides that qualifying residents who are served with an unlawful detainer summons and complaint (the court action to enforce an eviction) are granted an additional 60 days to file a response. This is a substantial amount of additional time, as the normal time period to file a response is between five and fifteen days depending on how the resident is served. The additional 60 days to respond to the unlawful detainer action is added to the amount of time the resident would otherwise have under existing law. Under current law, residents who are personally served (i.e., handed the documents directly) are given five "court days" to respond after they are served. Residents who are served by substituted service (i.e., delivered to a person other than the resident and sent by certified mail) or pursuant to an order to post (i.e., posting at the residence and sent by certified mail with court approval) are given an additional ten calendar days. "Court days" refers to non-holiday weekdays, it is the judicial equivalent of business days. The Governor's order does not specify whether the additional 60 days are "court days" or "calendar days," however courts have generally used calendar days as the unit of measurement unless court days are specified.



Second, the order prohibits a writ of possession from being enforced against a qualifying resident. A writ of possession is the court document issued after a judgment in an unlawful detainer action is granted in favor of the landlord. The writ of possession authorizes the sheriff of the county where the property is located to perform a lock-out. By prohibiting the enforcement of writs of possession, the executive order allows qualified tenants to stay in place while the executive order remains in effect, even though there is a court order for their eviction.

3. Who qualifies for the protections created in the Governor’s March 27 executive order that mandates protections for residents who are financially affected by the COVID-19 pandemic?

There are three criteria a resident must meet to qualify for the protection under the Governor’s March 27, 2020, executive order.

First, the resident must, prior to March 27, 2020, have “paid the rent due to the landlord pursuant to an agreement.” It’s unclear what exactly this requirement means. The most logical reading is that the tenant must have been current on the rent (or paying rent pursuant to a payment plan agreed to with the landlord) prior to March 27. However, the language could also be interpreted to mean that, at some point prior to March 27, the tenant had paid *any* rent pursuant to an agreement with the landlord – not that the resident paid *all* the rent due pursuant to an agreement with the landlord. This latter interpretation would have the effect of removing residents whose tenancies began on or after March 27 from the protections provided in the order.

Second, the resident must notify the landlord in writing within seven days of the rent due date that they need to defer some or all of the rent because they face a COVID-19 related financial hardship. COVID-19 related hardships include, but are not limited to, the following: (a) being unavailable to work because the resident was sick with a suspected or confirmed case of COVID-19 or caring for a household or family member who was sick with a suspected or confirmed case of COVID-19; (b) experiencing a lay-off, loss of hours, or other income reduction resulting from COVID-19, the state of emergency, or related government response; or (c) missing work to care for a child whose school was closed in response to COVID-19. This list is non-exclusive, which means that residents could qualify for the protections even if their financial hardship isn’t specifically listed but is related to COVID-19.

Third, residents must retain “verifiable documentation” to support their claim that they are unable to pay due to a COVID-19 related hardship. Examples of “verifiable documentation” include termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters or statements from an employer or supervisor explaining the tenant’s changed financial circumstances. The resident’s obligation to provide this documentation to the landlord is discussed in Question 5.

4. How long is the Governor’s March 27 executive order in effect?

The executive order is in effect through at least May 31, 2020, but could be extended by the Governor.

5. Does the Governor’s March 27 executive order require residents to provide proof that they qualify for its protections?

The executive order requires residents to “retain” the documentation that supports their claim that they qualify for protection, but it isn’t clear about whether or when that documentation must be provided to the landlord. The executive order seems to contemplate that the documentation be provided *at some point*, as it states that the documentation “may be provided to the landlord no later than the time upon payment of back-due rent.” However, use of the term “may” – which is generally interpreted to be permissive, rather than mandatory – implies that it is the resident’s choice whether to provide the documentation. In addition, reference to the documentation being provided “no later than the time upon payment of back-



due rent” makes little sense, as the landlord would have no need of the documentation if the back-due rent is paid in full.

Because the protections provided in the Governor’s order apply once a landlord has initiated an unlawful detainer action, which should be untaken with the assistance of an attorney, CAA recommends working with your attorney to determine whether and/or when you may require the tenant to submit documentation in support of their claim.

Note that many local eviction moratoria do require the resident to submit documentation to the landlord in order to qualify for protection under the local ordinance. The interplay of the Governor’s executive order and local eviction moratoria is discussed in Question 11.

6. Does the Governor’s March 27 executive order require me to forgive the rent the resident can’t afford to pay?

No. The executive order expressly states that it does not relieve a resident of liability for unpaid rent. The executive order provides temporary relief from eviction to residents who are struggling to pay some or all of the rent due because of a COVID-19 related hardship.

7. Does the Governor’s March 27 executive order prevent me from entering into a payment plan agreement with my resident?

No. The Governor’s executive order does not prohibit a landlord and resident from agreeing to a payment plan. Note that some local eviction moratoria require a landlord to allow rent to be repaid over a specified period of time.

8. Does the Governor’s March 27 executive order prevent me from serving a 3-day notice to pay rent or quit if a resident doesn’t pay the rent on time?

No. However, a local eviction moratorium may affect your ability to serve a 3-day notice. The interplay of the Governor’s executive order and local eviction moratoria is discussed in Question 11.

9. Does the Governor’s March 27 executive order prevent me from filing an unlawful detainer action if I previously served a 3-day notice to pay rent or quit and it has now expired?

No. However, a local eviction moratorium may affect your ability to file an unlawful detainer. The interplay of the Governor’s executive order and local eviction moratoria is discussed in Question 11.

10. I understand the Governor’s March 27 executive order prevents the Sheriff from performing a lock-out, but can I just change the locks if my resident refuses to pay rent?

No. You should never lock out residents who are residing in a rental unit, even if they have failed to pay rent or otherwise breached the rental agreement, unless you have followed the proper legal procedure. This is considered a form of “self help” that is prohibited by law and can subject you to liability for wrongful eviction and other penalties. Similarly, it is illegal to take other steps to interfere with the resident’s possession, such as shutting off utilities or removing the resident’s personal property, with the intent to terminate the tenancy.

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11. The city where my rental unit is located adopted an eviction moratorium. Does the Governor's March 27 executive order take precedence over the local ordinance?

The Governor's order does not preempt local eviction moratoria. It is possible for a resident to be protected only by a local moratorium, only by the Governor's order, or by both a local eviction moratorium and the Governor's order. However, note that because most local eviction moratoria prevent the landlord from initiating an eviction process when the resident meets the qualification criteria, the protections provided by the Governor's executive order may not come into play.

Understanding how the requirements of the Governor's executive order and local eviction moratoria interact can be complex as they have similar, but distinct, requirements. It is important to consider separately a resident's claim for relief under local ordinances and/or the Governor's executive order. The fact that residents may not qualify for protection under a local ordinance doesn't necessarily mean they don't qualify for protection under the Governor's order, and vice versa. The following examples illustrate how the protections under local ordinances and the Governor's executive order interact.

Example 1

Rental unit is located in the City of Sacramento, which has adopted an eviction moratorium for residents who have experienced a COVID-19 related loss of income provided that the resident notifies the landlord before the rent is due and provides documentation in support of the claim.

On the day before rent is due, the resident notifies the landlord that they were laid off from their job as a server in a restaurant, and consequently is unable to pay the rent. At the same time the resident provides notice to the landlord, they provide a letter from their employer explaining that they were laid off, and they provide pay stubs showing a reduction in wages.

In this case, the resident would be entitled to protection under both the local ordinance and the Governor's executive order.

The resident would be entitled to protection under the local ordinance because they: (1) suffered a qualifying loss of income, and (2) provided notice and documentation before the rent was due, as required by the local ordinance.

The resident would be entitled to protection under the executive order because they: (1) suffered a qualifying loss of income, and (2) notified the landlord within seven days of the rent coming due. However, because the local ordinance would prevent the landlord from serving a 3-day notice to pay rent or quit, the tenant is unlikely to need the protections provided by the Governor's executive order (which apply only after a court action is initiated).

Example 2

Same facts as Example 1 in the City of Sacramento, except that the resident does not give notice of their inability to pay the rent until five days after the rent came due

In this case, the resident would qualify for protection under the Governor's executive order but not the local City of Sacramento ordinance.

The resident would not qualify for protection under the local ordinance because the resident did not notify the landlord of their inability to pay rent before it came due, as required by the ordinance.

The resident would be entitled to protection under the executive order because they: (1) suffered a qualifying loss of income, and (2) notified the landlord within seven days of the rent coming due. Therefore, the landlord could serve a 3-day notice to pay rent or quit, but the residents would be given an



additional sixty days to respond to the unlawful detainer complaint and could not be locked-out if a judgment was entered prior to the Governor's order being lifted.

Example 3

Rental unit is located in the City of Los Angeles, which has adopted a local ordinance which prohibits evictions based on unauthorized pets related to the COVID-19 pandemic. The resident gets a dog, in violation of their lease, as part of a local animal shelter's program to foster animals while the shelter is closed because of the COVID-19 shelter in place order.

In this case, the resident would qualify for protection under the local ordinance, but not the Governor's executive order.

The resident would be entitled to protection under the local ordinance because their eviction is for having the unauthorized dog is related to the COVID-19 pandemic.

The resident would not qualify for protection under the Governor's executive order because the resident is not being evicted for non-payment of rent, as required by the executive order.

