

EVICTIONS IN A COVID WORLD

ACA SEMINAR

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2 **DISCLAIMER**



- This presentation outline and the presentation itself are for *general* educational purposes only and are not intended to provide *specific* guidance or legal advice about what to do or not to do in any particular case. You should not rely on this general information to make decisions about specific matters.

3 30 MINUTES NOT ENOUGH. BUT WE WILL TRY TO LEARN EVERYTHING

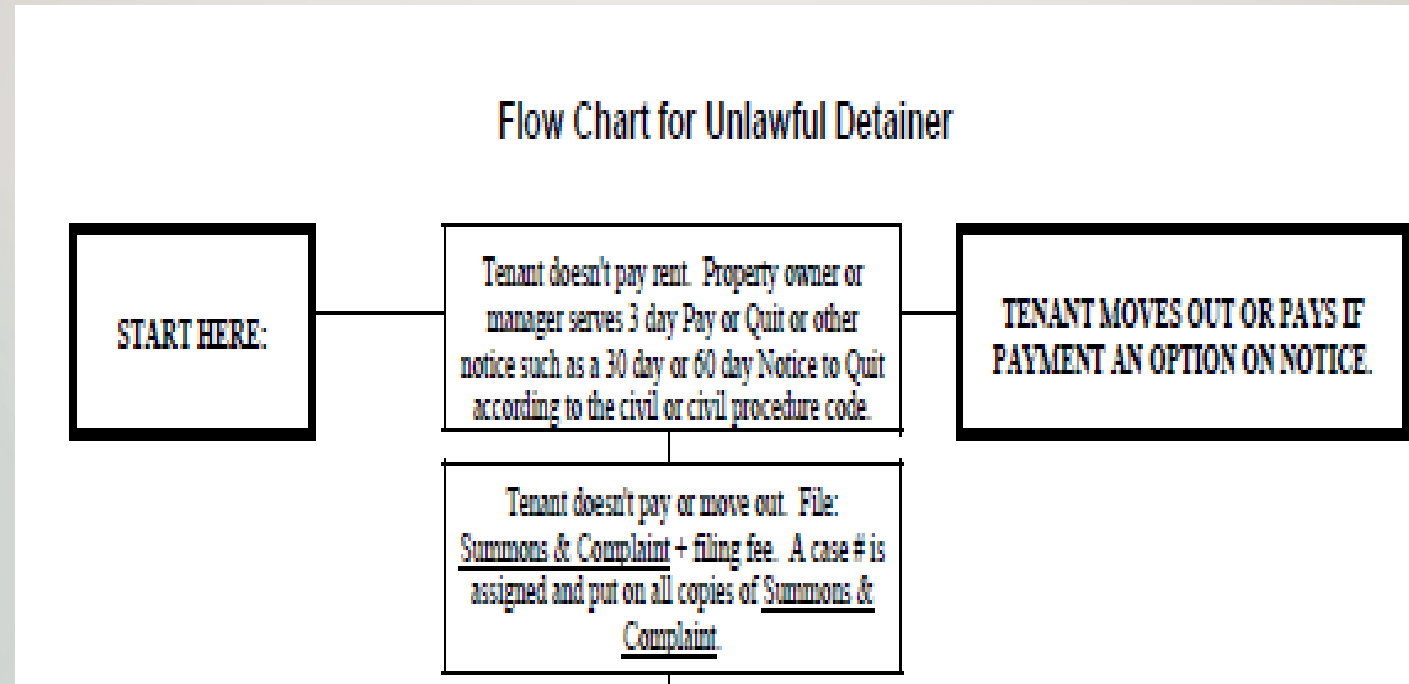
- This is not a complete lecture on evictions or the Covid law as the law is changing everyday.



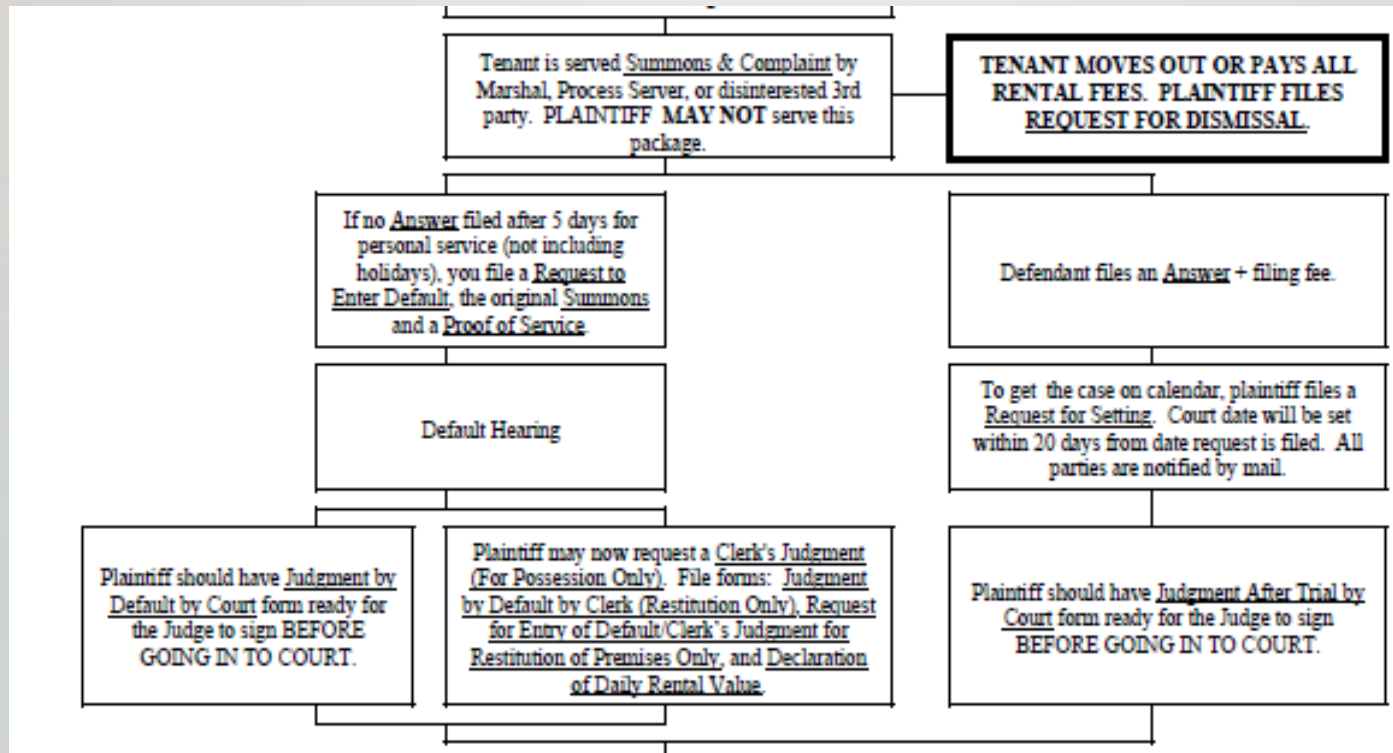
4 BREAKDOWN OF LECTURE

- PRE-COVID LAW ON EVICTIONS
- LEARNING COVID LAW UP TO JUNE 30, 2021
- WHAT DO YOU DO NOW IF YOU ARE A LANDLORD OR A TENANT?
- Q&A

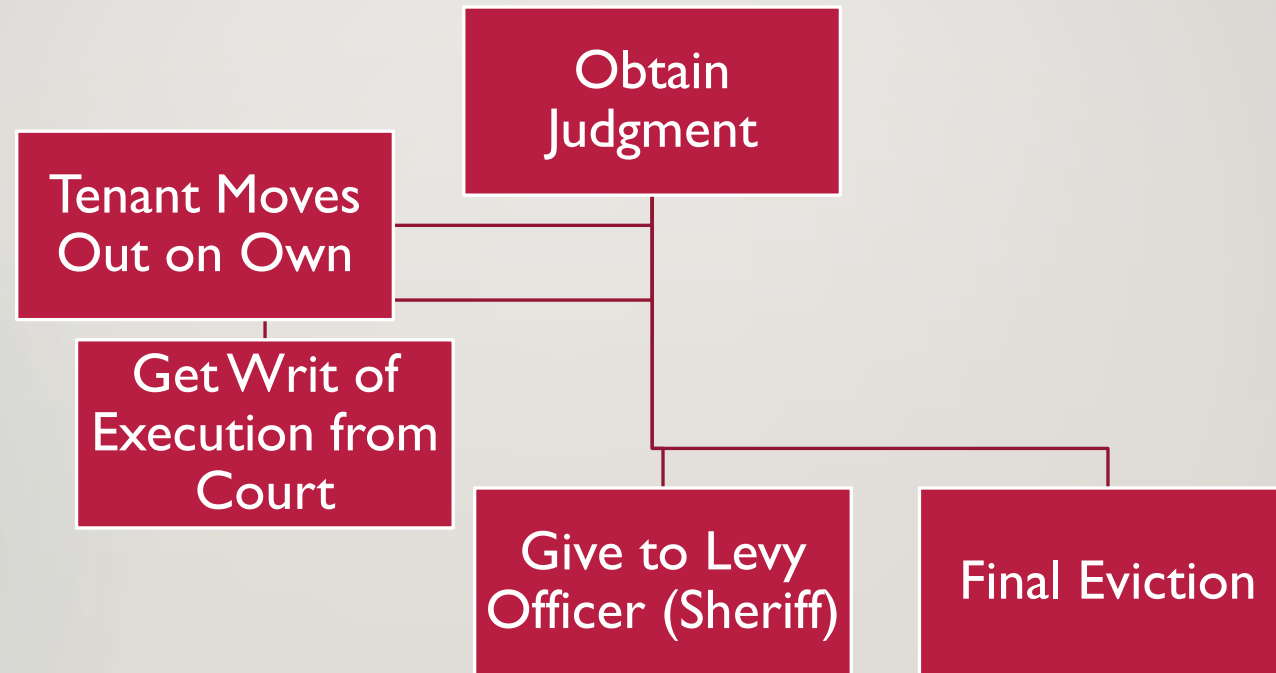
5 QUICK SUMMARY OF UNLAWFUL DETAINER –



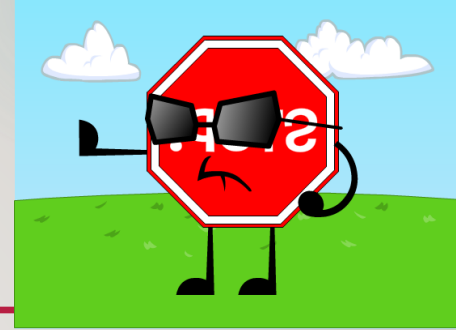
6 QUICK SUMMARY OF UNLAWFUL DETAINER – NON RENT PAYMENT



7 QUICK SUMMARY OF UNLAWFUL DETAINER



8 BASICS OF EVICTIONS LAW LESSON #1 - NO SELF HELP



- In the ordinary commercial or residential tenancy context, the only permissible “forcible” entry or detainer is by a sheriff or marshal acting under *writ of possession* issued pursuant to a *valid and enforceable* unlawful detainer judgment. [[*Bedi v. McMullan, supra, 160 CA3d at 275, 206 CR at 580*](#); see also [*Glass v. Najafi, supra, 78 CA4th at 51, 92 CR2d at 610*](#)]
- Otherwise, a landlord may enter to effect a repossession only after the tenant has *abandoned* the premises (different lecture).
- Even if not a tenant, do not use self help. At minimum, call the police if you feel the person is a trespasser.

9 BASICS OF EVICTION LAW

LESSON NO. 2 - NOTICE ALONE DOES NOT RESTORE POSSESSION

- Service of the notice itself restore the landlord to actual possession. Though the tenant's *right* of possession is terminated by the tenant's noncompliance with the notice (above), possession is restored only when the notice is *acted upon* by one of the parties—by the tenant's quitting or vacating, or by the landlord's prevailing in an unlawful detainer. [[*Grand Central Public Market, Inc. v. Kojima* \(1936\) 11 CA2d 712, 71](#)

10 BASICS OF EVICTION LAW – LESSON NO. 3 TERMINATING THE TENANCY – STATEMENT OF AMOUNT DUE

- A CCP § 1161 (2) three-day notice must state no more than the amount of rent due; and it must be served after the stated amount becomes due. [CCP § 1161(2); Lydon v. Beach (1928) 89 CA 69, 74, 264 P 511, 513]. A three-day notice for *noncommercial* (residential) property that *overstates* the amount of rent due is wholly *ineffective* and will *not* support an unlawful detainer action. [Levitz Furn. *Co. of the Pacific, Inc. v. Wing-tip Communications, Inc.*, supra, 86 CA4th at 1038, 1040, 103 CR2d at 658, 659; see *Nourafchan v. Miner* (1985) 169 CA3d 746, 753, 215 CR 450, 455—\$5.96 overstatement in \$1,078 rent due rendered 3-day notice invalid; but see also *Gruzen v. Henry* (1978) 84 CA3d 515, 519, 148 CR 573, 575—\$18 overstatement held “de minimis” and thus not affecting validity of 3-day notice]
- HOWEVER...

II BASICS OF EVICTION LAW – LESSON NO. 4

ESTIMATED 3-DAY NOTICE OK FOR COMMERCIAL

- Commercial landlords may also rely on *statutory* authority to serve a three-day notice *estimated* rent demand: Pursuant to [CCP § 1161.1](#), a three-day notice for nonpayment of rent on *commercial* property may state the amount due as an *estimate* ... so long as the amount is “*reasonably estimated*” and “clearly identified” by the notice as an estimate. [[CCP § 1161.1\(a\)](#); *Levitz Furn. Co. of the Pacific, Inc. v. Wingtip Communications, Inc.* (2001) 86 CA4th 1035, 1038, 103 CR2d 656, 658; see [WDT-Winchester v. Nilsson](#) (1994) 27 CA4th 516, 534, 32 CR2d 511, 521—unreasonably overestimated notice insufficient to support nonpayment of rent UD; [Bevill v. Zoura](#) (1994) 27 CA4th 694, 697, 32 CR2d 635, 637, fn. 2—statute inapplicable to notice not identified as “estimate”]

12 BASICS OF EVICTION LAW – LESSON NO. 5 DEMAND RENT ONLY.

- A three-day notice may be served for the tenant's default in *any* monetary obligation under the lease. [See [Bevill v. Zoura \(1994\) 27 CA4th 694, 697-698, 32 CR2d 635, 637, fn. 1](#) (common area maintenance charges); [Canal-Randolph Anaheim, Inc. v. Wilkoski \(1978\) 78 CA3d 477, 492, 143 CR 789, 797](#) (rhng.den. with opn. [78 CA3d 494, 144 CR 474](#)) (interest and late charges)]



13 BASICS OF EVICTION LAW – LESSON NO. 6 NOT HAVING THE RIGHT LANGUAGE

- A three-day nonpayment of rent notice must be stated in the *alternative*, demanding that the tenant either “pay or quit” (i.e., remit accrued back-due “rent” or return possession to the landlord). [[CCP §§ 1161\(2\), 1161.1\(a\)](#); [Hinman v. Wagnon \(1959\) 172 CA2d 24, 27, 341 P2d 749, 752](#)]. (Failure to state the notice in the alternative may amount to a waiver of the right to declare a forfeiture and evict the tenant.)
- Though titled “Three-Day Notice to Pay Rent or Quit,” a three-day notice is *ineffective* to sustain an unlawful detainer if the *body* of the notice instructs the tenant to pay rent *and* quit (i.e., failing to inform tenant of *alternative* to pay “or” quit).
- Accordingly, a landlord who has served such a notice should serve a *second* three-day notice, properly informing the tenant of the *option* to pay rent or quit. Commencing an unlawful detainer without curing the defective first notice will lead to inevitable delays and may substantially compromise the landlord's right to regain possession (tenant might, in the interim, “cure” the rent default, though long after the first three-day pay period).

14 BASICS OF EVICTION LAW – LESSON NO. 7

TENANT'S OPTION TO PAY RENT

- Tenants are entitled to “cure” the rent default by *paying* the amount due within three days after service of the notice; such payment is a *valid defense* to unlawful detainer filed on the three-day notice and preserves the *tenant's* right to retain possession. [CCP § 1161.5; Davidson v. Quinn (1982) 138 CA3d Supp. 9, 12, 188 CR 421, 423; Briggs v. Electronic Memories & Magnetics Corp. (1975) 53 CA3d 900, 905, 126 CR 34, 37; also see Gersten Companies v. Deloney (1989) 212 CA3d 1119, 1128-1129, 261 CR 431, 436-437—statutory three-day grace period applies to federally-subsidized rental units]

15 BASICS OF EVICTION LAW – LESSON NO. 8

REFUSING RENT WILL NOT WORK

- The landlord cannot prevent the tenant's timely cure by refusing to accept performance. Thus, if the landlord refuses a timely tender of the rent due, the tenant may deposit it in a bank or savings and loan in the landlord's name and give notice thereof to the landlord. This procedure binds the landlord to a “constructive acceptance” and extinguishes the debt ([CC § 1500](#)). [See generally, [Guy F. Atkinson Co. of Calif. & Subsidiaries v. Commr. of Int. Rev. Serv. \(9th Cir. 1987\) 814 F2d 1388, 1393](#)—when a party makes an unconditional offer to perform but the tender is refused, the “(t)ender gives a right to performance from the other party”].
- Landlords are under no obligation to accept a back-due rent tender *after* expiration of the notice period; and such tender is ordinarily *no* defense to an unlawful detainer. [[In re Windmill Farms, Inc. \(9th Cir. 1988\) 841 F2d 1467](#); but see dictum in [Briggs v. Electronic Memories & Magnetics Corp. \(1975\) 53 CA3d 900, 905, 126 CR 34, 37](#)—tenant may pay rent after notice period runs and retain possession if notice did *not* elect forfeiture; also see [CCP § 1174\(c\), ¶9:421 ff.](#) (five days to pay rent and damages under UD judgment not declaring forfeiture and thereby be restored to possession)]

16 BASICS OF EVICTION LAW – LESSON NO. 9 PERFORM OR QUIT

- If the breach is *curable*, the three-day notice must be stated in the alternative—i.e., “perform or quit.” [[CCP § 1161\(3\)](#); *Feder v. Wreden Pckg. & Prov. Co.* (1928) 89 CA 665, 265 P 386; *Downing v. Cutting Pckg. Co.* (1920) 183 C 91.
- Non-curable Breach: Assignment, sublease or commission of waste in breach of rental agreement; commission of nuisance or using premises for illegal purpose.
- A [§ 1161\(4\)](#) breach *cannot be “cured.”* Therefore, once the notice is properly served and the three-day period has expired, the landlord is *absolutely* entitled to commence an unlawful detainer against the tenant. [[CCP § 1161\(4\)](#)—proscribed activity “thereby terminates the lease”]

17 BASICS OF EVICTION LAW – LESSON NO. 10 AGREEMENTS FAIL TO BE IN FOREIGN LANGUAGE

- Did you know that many rental agreements are illegal?
- A person in a trade or business, who negotiates primarily in the Spanish, Chinese, Tagalog, Vietnamese, or Korean language in the course of entering into a contract with a resident tenant, must give the tenant a written translation of the proposed contract in the language of the negotiations. Civil Code 1632.
- Contracts for the rental, lease or sublease of apartments or other dwellings (including mobile homes) for a period longer than one month. (Month-to-month and week-to-week rental contracts are not covered)

18 LITIGATION I/4

- The timeline for unlawful detainer actions are very short. That includes discovery.
- Discovery, in the United States, is the pre-trial phase in a lawsuit in which each party, through the law of civil procedure, can obtain evidence from the opposing party by means of discovery devices including requests for answers to interrogatories, requests for production of documents, requests for admissions and depositions.
- Attorneys typically do not serve discovery which is a creature of flat fee attorneys for a default.



19 LITIGATION 2/4



- Discovery against the other side comes in two main forms: (1) written discovery, and (2) oral discovery.
- *Written discovery* asks the other side in a written format to justify what their position is.
- *Oral discovery* comes in the form of a deposition. In the United States and California, a deposition is the out-of-court oral testimony of a witness that is reduced to writing for later use in court or other related discovery purposes. Although it is out of court, it is made under penalty of perjury (under oath).
- Recommended: Written Discovery. Request for Admission.

20 LITIGATION ³/₄ – DISCOVERY

- Full discovery is permitted in *all* unlawful detainer proceedings. The “Economic Litigation” rules ([CCP § 90 et seq.](#)) restricting discovery in limited civil cases do *not* apply to unlawful detainers. [[CCP § 91\(b\)](#)]
- Response times, unlike regular litigation is five days.
- Typically, parties do not respond.
- CCP § 1170.8 states that motions to compel may be filed with only 5 day (plus service) notice. Also oppositions and replies may be made verbally at the time of the hearing.

21 LITIGATION 4/4 – REQUEST FOR ADMISSIONS

- CACI Jury Instructions 210: Before trial, each party has the right to ask another party to admit in writing that certain matters are true. If the other party admits those matters, you must accept them as true. No further evidence is required to prove them.



22 THE REAL LECTURE – COVID TIME!



23 KEEP THIS WEBSITE ! SECRET OF ATTORNEYS!

- [https://content.next.westlaw.com/Document/I50fd3ae86ac711eaadfea82903531a62/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=\(sc.Default\)&firstPage=true&bhcp=1&fbclid=IwAR0fCwd0UecEF9jGGygOjg7MacxTBa-PnVVSifgMQo50VjSqwRe4O3EbLEIQ](https://content.next.westlaw.com/Document/I50fd3ae86ac711eaadfea82903531a62/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&firstPage=true&bhcp=1&fbclid=IwAR0fCwd0UecEF9jGGygOjg7MacxTBa-PnVVSifgMQo50VjSqwRe4O3EbLEIQ).

- The website link **above** provides all eviction laws under Covid for all 50 states. It is updated on a daily basis!

24 MANY LAWS – STATE, COUNTY, AND CITIES

- There is a lot of confusion during Covid.
- There were many laws that overlapped with each other. State, County, City laws.
- However, if you learn anything during this lecture remember one date.
- **UNLESS THE LAW CHANGES:** July 1, 2021, you can begin evictions, not before.

25 SB-91 REQUIREMENTS FOR EVICTIONS - SLIDE 1/2

- (1) SB-91 extends the tenant protections until July 1, 2021 that is why you hear about June 30, 2021 as the deadline.
- (2) A 15-day notice, not 3-day notice is required for non-payment of rent.
- (3) Tenant cannot be evicted IF they return a declaration of Covid-19 financial distress.
- (4) Extends deadline for residents impacted by Covid-19 to make 25% payment from January 31, 2021 to June 30, 2021.
- (5) Requires landlords to provide hardship forms in the language executed.

26 SB-91 REQUIREMENTS FOR EVICTIONS - SLIDE 2/2

- (6) “This bill, on or before **February 28, 2021**, would require a landlord to provide an additional notice to tenants who, as of February 1, 2021, have not paid one or more rental payments that came due between **March 1, 2020, and June 30, 2021**. The bill would prohibit a landlord from serving specified notices demanding payment of rent until the landlord has provided this notice.”
- (7) If you do not send the required notice, you likely cannot evict.
- (8) Any civil action for rent cannot be brought until August 1, 2021.

27 VALID TENANT STATEMENT REGARDING OWED RENT

- “Declaration of COVID-19-related financial distress” means the following written statement: I am currently unable to pay my rent or other financial obligations under the lease in full because of one or more of the following: 1. Loss of income caused by the COVID-19 pandemic. 2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic. 3. Increased expenses directly related to health impacts of the COVID-19 pandemic. 4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income. 5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic. 6. Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses. Any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of income and/or increased expenses

28 LAWSUITS TO COLLECT RENT

- If you are seeking to collect a judgment, you have to comply with the following:
- (1) You have to show the Court that you made a good faith effort to investigate whether government rental assistance is available to the resident; and
- (2) You sought governmental rental assistance for the resident; and
- (3) Cooperated with the resident's effort to obtain rental assistance from any governmental entity or third party.
- Conclusion. You probably are not going to get back unpaid rent.

29 WHAT ABOUT COMMERCIAL TENANCIES DURING COVID?

- Governor Newsom's [Executive Order N-80-20](#) ("EO N-80-20") grants local governments the authority to enact protections for commercial tenants. Many local governments that have enacted commercial eviction moratoriums have tied the effectiveness of the protections to EO N-80-20, which is currently set to expire on June 30, 2021.
- Hence, many counties have used this to protect tenants as well, including commercial

30 COMMERCIAL EVICTIONS

- The County's Moratorium is not a cancellation of unpaid rent during the Moratorium. Tenants with nine (9) or fewer employees will have up to twelve (12) months following the end of the Moratorium to repay any past due payments. Tenants with 10 or more, but less than 100, employees will have up to six (6) months following the end of the Moratorium to pay back any past due rent in equal payments, unless prior arrangements have been made with the landlord.

3 | COMMERCIAL EVICTIONS

- Up to 100 employee commercial tenants
- Tenants are responsible for providing notice to their landlord if they are unable to pay rent due to financial impacts related to the COVID-19 pandemic. Landlords must accept a Tenant's self-certification as a valid form of notice from Tenants with nine (9) employees or fewer
- Tenants with 10 or more, but fewer than 100, employees will need to provide written documentation that demonstrates inability to pay rent due to financial hardship related to COVID-19 to their landlord.

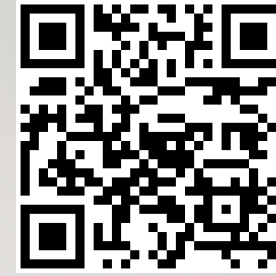
32 MANY ATTORNEYS HAVE THE SAME QUESTIONS

- (1) If I am a Landlord can the bank stop foreclosure?
- (2) If the tenant does not follow the requirements can I still evict?
- (3) If the tenant defaults, will the Court prevent eviction if the requirements are not met?
- (4) Will there be another extension of the moratorium?

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ANY QUESTIONS? CONTACT

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