



Monthly Newsletter

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AB 3088 adds additional complexity and limitations to the unlawful detainer remedy for landlords.

Unlawful detainer is the most common type of eviction lawsuit in California. Through January 2021, newly passed AB 3088 extends just cause protections to all residential tenancies in California, as available under the unlawful detainer remedy.

The practical effect of this new law is that there will be no evictions, except in truly extraordinary circumstances, until after Covid is over.

In essence, this new Covid law bootstraps the just cause requirements of last year's AB 1482 law, the rent control law, and makes them applicable to all tenancies, not just tenancies at multi-family properties, as under last year's law.

There are important differences, though, between the just cause protections in the new Covid law and last year's rent control law. Properties subject to last year's rent control law must pay relocation assistance to tenants if the property owner wishes to end the tenancy for a substantial remodel or sale of the property. The new Covid law temporarily removes the option to end a tenancy for substantial remodel and does not require relocation assistance for properties otherwise not subject to rent control.

The new Covid law also prohibits landlords, as part of the unlawful detainer process, from recovering debt that arises from a Covid related cause. However, this is less onerous to landlords than it may seem on its face. Often in the unlawful detainer process the best strategy is to ask a judge for recovery of the property only and to pursue a money judgment, if at all, at some later time. The reasoning behind this strategy is that it is best to keep the case simple and straightforward. Also, a piece of paper saying you are owed money from a tenant, who often has no money, is in all likelihood worthless in most circumstances. The objective needs to be to regain possession of the property.

Furthermore, you cannot know the full extent of your money damages until after you recover possession of the property, so if the goal is to obtain a money judgment that includes all damages that a landlord suffered then you would need to come back later with a separate lawsuit anyway. Therefore, new law or not, the wise approach is often to use the unlawful detainer remedy to obtain possession only of a property and to deal separately with any money issues.

Dealing with just cause evictions is a minefield of complexity that punishes landlords who fail to properly document tenant transgressions.

The list of just cause requirements that a landlord may use to justify a termination of tenancy is reasonable enough but still creates a minefield of potential problems if tenant transgressions are not properly documented.

In the olden days (i.e. last year), a landlord could terminate a tenancy for any reason or no reason but not a bad reason. A bad reason is something like ending a tenancy because the tenant reported a habitability concern to the local building department. In the case of a dispute, this placed the burden on the tenant to prove that a landlord was ending a tenancy for a bad reason and in most cases that was a fool's errand. Even landlords who behaved badly could get away with it as long as they never admitted as much to the tenant.

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Now, though, just cause eviction law has flipped the table. Bad tenants can avoid eviction unless their landlord exhaustively documents every transgression and uses the appropriate forms at every step of the process.

The first step of the process is to serve an appropriate notice to perform or quit. Or, in the case of a monetary breach by the tenant, a notice to pay or quit. The new Covid law, AB 3088, adds to the list of forms that landlords must use. There are different types of notices depending on the type of monetary breach and when it happened plus there is the notice to perform or quit in the instance of a non-monetary issue that needs correcting.

Suffice it to say that as long as Covid remains an issue landlords must work with tenants on curing any sort of monetary breach. There is absolutely no sense in trying to evict a tenant for monetary breach right now.

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Dealing with non-monetary issues requires a more formal approach than in prior times. It used to be that a phone call would be the best course of action if a tenant is leaving a barbecue on a condominium porch in violation of association rules. Now, though, in addition to that phone call the landlord must serve a notice to perform or quit in anticipation of a situation months later when there might be a repeat violation. If there is such a repeat violation then you cannot do anything about the matter unless you served the appropriate notice the first time it happened. Therefore, landlords must meticulously document every transgression when they happen.

Formerly, if a tenant was causing nuisance to neighbors a landlord could simply not renew the lease or terminate the tenancy with appropriate notice. Now, the landlord must be able to prove the exact nature of the nuisance and that the tenant was given the opportunity to correct.