



DO YOU HAVE A
PLAN TO CREATE
RENT INCENTIVES
DURING COVID?

80%
OF OWNERS DO NOT

COVID-19: COLLECTING RENTS DURING A PANDEMIC

WRITTEN BY TERESA GORMAN,
ATTORNEY AT LAW

IF YOU ARE A FIDUCIARY COLLECTING RENT, IT IS IMPERATIVE TO UNDERSTAND THE RAPIDLY CHANGING POLICIES SURROUNDING TENANCY ISSUES DURING COVID-19. IT IS ALSO IMPORTANT TO HAVE A POLICY IN PLACE FOR WHAT YOU WILL DO ONCE THE EMERGENCY ORDERS ARE LIFTED AND TENANTS ARE LEFT OWING LARGE AMOUNTS OF BACK RENT. THIS ARTICLE WILL SUMMARIZE THREE SIGNIFICANT EXECUTIVE ORDERS AND DISCUSS SOLUTIONS ON ASSISTING TENANTS IN RESTORING THEIR FINANCIAL HEALTH.

FRES
Fiduciary Real Estate Services
1-888-511-3737 (FRES)

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STATUS OF CALIFORNIA MORATORIUM ON EVICTIONS

On March 27, 2020 Governor Newsom signed Executive Order N-37-20 which ordered:

A residential tenant has an additional Sixty (60) days to respond to a Complaint for Unlawful Detainer. The prior deadline CCP 1167 was five (5) days, excluding weekends and judicial holidays, if: 1) the tenant had paid rent prior to March 27, 2020; 2) the tenant notifies the landlord in writing within seven (7) days after rent is due that they are unable to pay rent due to a COVID-19 related issue; and 3) the tenant has verifiable documentation of financial hardship created by COVID-19. This Order is effective through May 31, 2020.

The tenant is still ultimately responsible for paying the entire amount of rent, presumably on June 1, 2020. Executive Order N-37-20 did not restrict evictions for reasons other than non-payment of rent, or if the tenant failed to notify the landlord the delay in payment was due to COVID-19.

Executive Order N-28-20 executed March 16, 2020 remains applicable to commercial tenants. Governor Newsom invited local jurisdictions to implement their own laws prohibiting or limiting commercial evictions. This Order is effective through May 31, 2020. As such, local county and city orders should be reviewed when addressing commercial eviction restrictions caused by COVID-19.

In reality, however, little can be done to pursue evictions for either residential or commercial evictions. On April 6, 2020 the Judicial Council of California adopted an emergency rule which prohibits the courts from issuing Summons through August 31, 2020. This effectively extends the moratorium on ALL evictions until September 1, 2020, other than for limited public health and safety issues.

In reality, however, little can be done to pursue evictions for either residential or commercial evictions. On April 6, 2020 the Judicial Council of California adopted an emergency rule which prohibits the courts from issuing Summons through August 31, 2020. This effectively extends the moratorium on ALL evictions until September 1, 2020, other than for limited public health and safety issues.

WHAT HAPPENS AFTER SEPTEMBER 1, 2020?

Nothing in the Executive Orders indicates that Landlords must forgive rent. California Association of Realtors (CAR) has developed several news forms (samples attached) to deal with the issues related to the pandemic including:

- Notice to Tenant of Ability to Pay Rent During Coronavirus Pandemic;
- Notice of Unforeseen Lease/Rental Coronavirus Circumstances;
- Coronavirus Rent Payment Delay and Repayment Agreement; and
- Coronavirus Lease/Rental Property Entry Advisory and Declaration.

After May 31, 2020 the moratorium will be lifted. As of September 1, 2020, Complaints for Unlawful Detainers will be accepted by the Courts. With five (5) months of potential unpaid rent accruing before a landlord can even begin an Unlawful Detainer, there is bound to be mountains of outstanding rents to be collected. Trying to proactively mitigate uncollected rents is essential. Determining when the landlord should work out payment plans with tenants, enter into cash for keys arrangements, or file Unlawful Detainer actions requires a careful analysis.

STATUS OF FEDERAL MORATORIUM ON EVICTIONS

On March 27, 2020 the Coronavirus Aid, Relief and Economic Security (CARES) Act was passed. The CARES Act imposes a 120-Day moratorium on residential evictions for nonpayment of rent (even if the nonpayment was unrelated to COVID-19) for any property secured by a “federally backed” loan. Further, tenants cannot be charged late fees. This moratorium is in effect through July 24, 2020.

STATUS OF LOCAL MORATORIUM ON EVICTIONS

Local jurisdictions are adding new emergency orders almost on a daily basis. For instance, on April 20, 2020, the City of Santa Monica extended the City's eviction moratorium through June 30, 2020. It further provides that residential tenants can pay back COVID-19 related past rents over a twelve (12) month period. Knowing State and Federal law is only the beginning. You must frequently scrutinize all emergency orders for the particular county or city in which each property is located.

CONTACT US IF YOU HAVE ANY QUESTIONS

At Fiduciary Real Estate Services (FRES) we have created incentives in the form of discounts to our tenants who pay their rent on time. FRES has also developed an Agreement which affords the tenants 120 days to make up past due rents. FRES provides transitional property management services for our professional clients. Please feel free to contact us if you would like more information on the solutions we offer.

FRES

Fiduciary Real Estate Services

T: (888) 511-3737

www.FiduciaryRealEstateServices.com





CALIFORNIA
ASSOCIATION
OF REALTORS®

**NOTICE TO TENANT OF ABILITY TO PAY RENT
DURING CORONAVIRUS PANDEMIC**

(C.A.R. Form NTAP, 4/20)

Agent: _____

Broker: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

Date: _____

To: _____ ("Tenant"),
on property known as _____ ("Premises"),

Dear Tenant,

The Coronavirus (COVID-19) pandemic has had a great impact on all of us. In response, Federal, State, county and city governments have taken action to help slow the spread of COVID-19. Among those actions have been so-called Stay at Home, Safer at Home, and Shelter in Place orders. One result of such orders is the loss of income for many of us.

To address the economic impact of such orders, the Federal and State governments, and many county and city governments, have issued orders protecting tenants who are unable to pay current rent due to a COVID-19 related job loss or substantial income loss.

While there are differences in the various orders, a common element is the requirement that tenants notify landlords if they are unable to pay current rent due to a COVID-19 related event. Additionally, the orders all provide that while rent may be abated for a certain amount of time, rent is not forgiven and must be repaid once the order expires. Depending on the applicable order in place for your locality, the repayment time could be two months or more.

If you have a COVID-19 related inability to pay current rent, PLEASE CONTACT your landlord or property manager IMMEDIATELY. You should also be prepared to document your claim that your inability to pay is related to COVID-19. We can work together towards a repayment of rent plan for when this crisis is declared over. If you do not make contact, you will be expected to pay your rent on time.

Working together we can get through this.

Sincerely,

(Signature of Landlord or Agent) Date: _____

(Type or print name of Landlord or Agent)

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NOTICE TO TENANT OF ABILITY TO PAY RENT DURING CORONAVIRUS PANDEMIC (NTAP PAGE 1 OF 1)



NOTICE OF UNFORESEEN LEASE/RENTAL CORONAVIRUS CIRCUMSTANCES

(C.A.R. Form NUCC-LR, 04/16/20)

In accordance with the terms and conditions of the Coronavirus Lease/Rental Addendum or Amendment (C.A.R. Form CVA-LR), agreed to by the Parties, affected Party () Tenant/Lessee OR () Landlord/Lessor) gives this notice to the other Party, as specified in the CVA-LR, OR () this notice is being provided for informational purposes not directly tied to any agreement.

1. The Unforeseen Lease/Rental Coronavirus Circumstance applicable to the affected Party and that is the reason for the extension of time or mutual cancellation specified in paragraph 4 or 5 of the CVA-LR is as follows (check all that apply):

A. Income-Related:

() Loss of income due to an Unforeseen Coronavirus Circumstance which prevents Tenant from having the ability to pay the agreed upon rent (ex. layoff, furlough, reduced hours.)

Additional Explanation: _____

B. Stay Home or other Government Order Presenting Difficulties in Scheduling:

- () Agreed upon improvements to the Premises () Pest control inspection
() Government required inspection () Unable to travel to occupy rental
() Movers () Other: _____

Additional Explanation: _____

C. Personal Impact (affected Party, immediate family or household member):

- () Confirmed diagnosis of COVID-19 () Government ordered quarantine
() COVID-19 related hospitalization () Physician ordered quarantine

Additional Explanation: _____

D. () Other: _____

2. Verification of the Unforeseen Lease/Rental Coronavirus Circumstance and its impact on performance is as follows, or, if checked () attached: _____

Note: Brokers and Agents (i) will not violate any Stay Home Orders, notwithstanding any Party's instructions, and (ii) will obey all Fair Housing laws while pursuing safe COVID-19 practices. Brokers and Agents cannot and will not determine the legal sufficiency or the good faith use of the stated reasons for purposes of requesting an extension or a cancellation and/or who is entitled to the funds in escrow.

By signing below, the affected Party acknowledge that they have read, understand, received a copy of this Notice of Unforeseen Lease/Rental Coronavirus Circumstances and that the information contained in it, or attached to it, is true.

Affected Party: Tenant/Lessee's or Landlord/Lessor's Signature _____ Date _____

Affected Party: Tenant/Lessee's or Landlord/Lessor's Signature _____ Date _____

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NUCC-LR 04/16/20 (PAGE 1 OF 1)

NOTICE OF UNFORESEEN LEASE/RENTAL CORONAVIRUS CIRCUMSTANCES (NUCC PAGE 1 OF 1)



**CORONAVIRUS RENT PAYMENT DELAY
AND REPAYMENT AGREEMENT**

(C.A.R. Form RPD, 4/20)

The following terms and conditions are hereby incorporated in and made a part of the Residential Lease or month-to-month rental agreement or Other _____ ("Lease"), dated _____, on property known as _____ ("Premises"), in which _____ is referred to as ("Tenant"), and _____ is referred to as ("Landlord").

1. RENT PAYMENT DELAY NOTIFICATION:

- A. Tenant has informed Landlord that Tenant is unable to pay all or a portion of the rent for the month of April, May, Other _____ DUE TO A COVID-19 related reason.
- B. Tenant's notification was received by Landlord on _____ (month, day), 2020.
- C. Tenant's notification was made orally, by email by text by letter hand delivered or sent via U.S. mail or Other: _____

2. TENANT STATED REASON FOR THE RENT PAYMENT DELAY (check all that apply):

- A. Tenant was unable to work because Tenant 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. Tenant experienced a lay-off, loss of hours, or other income reduction resulting from COVID-19, the state of emergency, or related government response;
- C. Tenant needed to miss work to care for a child whose school was closed in response to COVID-19;
- D. Other: _____

3. PROOF THAT TENANT IS UNABLE TO PAY RENT:

- A. Tenant shall provide Landlord with documentation verifying the reason(s) stated above that Tenant is unable to pay rent.
- B. The verifiable documentation shall be delivered to Landlord no later than the time Tenant agrees to begin paying back the delayed rent OR was delivered to Landlord with the notification OR was delivered to Landlord on _____ (date) OR is being attached to this form when signed by Tenant.
- C. Acceptable documentation of Tenant's inability to pay includes: 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, Other: _____

4. AMOUNT OF RENT PAYMENT BEING DELAYED:

- A. April:
 - (1) The rent that is due for the month of April is \$ _____.
 - (2) The amount of rent Tenant agrees to pay for the month of April is \$ _____.
 - (3) The amount of April rent that will be delayed is \$ _____.
- B. May:
 - (1) The rent that is due for the month of May is \$ _____.
 - (2) The amount of rent Tenant agrees to pay for the month of May is \$ _____.
 - (3) The amount of May rent that will be delayed is \$ _____.
- C. Other: (if the delayed rent period is more than one month, use the total aggregate amount for the entire period)
 - (1) The total rent that is due for _____ is \$ _____.
 - (2) The total amount of rent Tenant agrees to pay for the period specified in 4C(1) is \$ _____. If the period is more than one month, this amount will be paid in equal installments on the day rent is normally due.
 - (3) The total amount of rent that will be delayed for the period specified in 4C(1) is \$ _____.
- D. The **TOTAL** rent payment that will be delayed is \$ _____.

5. REPAYMENT PLAN: Tenant shall repay Landlord the total delayed rent as follows:

- A. All at once on June 1, 2020 OR _____ (date).
- OR B. In equal monthly installments beginning on June (or _____) 1, 2020 and continuing thereafter for 6 (or _____) months.
 - (1) Each repayment amount shall be \$ _____, per month.
 - (2) The last repayment shall be on _____ (date).
- OR C. Other: _____
- D. In no event shall payment be required prior to the end of the applicable Executive Order permitting a tenant to delay the payment of rent. If the applicable Executive Order is extended or a new Executive Order is enacted, all repayment dates above shall be extended by the amount of additional time added due to such order. The repayment amount in 5B(1) and the last payment date in 5B(2) will be recalculated based on the new total delayed rent. For any months covered under such extension or new order, the delayed rent shall be calculated based on the same proportion as the last month in which rent was delayed.

Tenant's Initials (_____) (_____)

Landlord's Initials (_____) (_____)

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CORONAVIRUS RENT PAYMENT DELAY AND REPAYMENT AGREEMENT (RPD PAGE 1 OF 2)

6. ADDITIONAL REPAYMENT TERMS:

- A. Payment shall be made in the same manner and to the same place as specified in the Lease, or as subsequently modified in writing.
- B. The repayment amount shall be in addition to the contractual monthly rent due.
- C. If the tenancy, whether fixed-term or month-to-month, terminates voluntarily by Tenant or for cause by Landlord, the unpaid portion of deferred rent shall become immediately due and payable.
- D. Failure to pay any installment of the deferred rent shall be deemed a breach of the covenant to pay rent and entitle Landlord to give Tenant applicable notice and commence an eviction.

7. APPLICABLE LAW: On March 16, 2020, California Governor Gavin Newsom issued an Executive Order permitting local jurisdictions to prohibit evictions in specified circumstances. On March 27, 2020, Governor Newsom issued an Executive Order which, under specified circumstances, restricts eviction of residential tenants and permits residential tenants to delay payment of rent for the months of April and May 2020. In some cases, Federal law may also impact the relationship between the Landlord and Tenant and the right of a tenant to delay the payment of rent. Landlord and Tenant are each advised to determine for themselves whether a local, State or Federal law applies to the tenancy and the obligation to pay rent and the right to commence an eviction. Nothing contained in this agreement shall be enforceable if prohibited by any law.

8. LEGAL ADVICE: Landlord and Tenant are each advised to seek advice of a qualified California real estate attorney familiar with the law of the jurisdiction in which the Premises is located.

9. ADDITIONAL TERMS: _____

By signing below, Tenant and Landlord acknowledge that each has read, understands, received a copy of, and agrees to the terms of this Coronavirus Rent Payment Delay and Repayment Agreement.

Tenant _____ Date _____

Tenant _____ Date _____

Landlord _____ Date _____

Landlord _____ Date _____

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CORONAVIRUS LEASE/RENTAL PROPERTY ENTRY ADVISORY AND DECLARATION

(C.A.R. Form PEAD-LR, 04/16/20)

(A new declaration should be obtained from each visitor, each time they enter the premises)

(May be used for more than one premises provided a copy is delivered to each Listing Broker/Property Manager.)

Rental Property Addresses

- 1. RISKS OF EXPOSURE: The Coronavirus (COVID-19) pandemic is a worldwide risk to human health. COVID-19 is highly contagious and has a mortality rate many times greater than the flu. COVID-19 can spread easily and exponentially. While people of all ages are at risk of catching COVID-19, persons with compromised immune systems and older persons may be at particular risk.
2. 'STAY HOME ORDERS': In order to reduce the spread of COVID-19, the State of California, as well as many California cities and counties have issued so-called 'Safer at Home' or 'Shelter in Place' ('Stay Home') Orders, obligating many businesses to close and residents to stay at home with limited exceptions for essential activities.
3. REAL ESTATE ACTIVITIES AS ESSENTIAL: Under Federal and State guidelines, real estate activities, which include property management, are considered essential activities. Nevertheless, this designation does not make them free from COVID-19 risks. All persons must still practice 'social distancing' and take all steps necessary to protect themselves and others. Some county and city orders are more restrictive than, and may take precedence over, Federal and State guidelines. You understand that if you engage in any activities in violation of any Stay Home Order, you are acting against the advice of Broker. Brokers and Agents (i) will not violate any Stay Home Orders, notwithstanding any Party's instructions and (ii) will obey all Fair Housing laws while pursuing safe COVID-19 practices.
4. PURPOSE OF ENTRY: The purpose of the entry is for allowing prospective purchasers or tenants to view or inspect the Premises, for making necessary or agreed to repairs to the Premises, for completing a pre-move-in or pre-move-out inspection of the Premises, or for other services in furtherance of a property management agreement.
5. TENANT/LESSEE OR OCCUPANT REPRESENTATIONS: If the person Signing below is the Tenant/Lessee or an occupant, Signer is voluntarily allowing someone to enter the Premises. Signer acknowledges being advised to clean and disinfect the Premises after the persons allowed to enter leave the Premises. Special attention should be given to areas that are likely to be touched such as doorknobs, handles, and counter tops.
6. PROPERTY MANAGER OR OTHER ENTRANT REPRESENTATIONS: If the person Signing below is a prospective purchaser or tenant, real estate agent, or other person whose services facilitate the completion or fulfillment of a lease/rental agreement or property management service, the Signer is voluntarily entering the Premises. Signer acknowledges that although others have been advised to clean and disinfect the property after each entry, doing so may not be possible, and may not have occurred prior to your entry, due to Stay Home Orders and other circumstances. Signer agrees to take all reasonable and necessary precautions to protect Signer and others from the spread of COVID-19, including, but not limited to, the following:
A. Following all Federal, State, and local laws and Stay Home Orders, even though such laws and orders may be changing rapidly.
B. Exercising care to protect yourself, and assessing your own risks, by considering your age, underlying health conditions, recent travel, possible exposure to COVID-19, doctor's recommendations, and local, State and Federal recommendations. You agree and understand that it is your responsibility to evaluate the risks and protect yourself.
C. Washing your hands with soap and water or using hand sanitizer, and wearing rubber gloves, a protective face mask, and protective shoe coverings. Remember to not touch your eyes, nose, or mouth.
D. Practicing social distancing by keeping at least 6 feet between yourself and others. Do not gather in groups, and do not touch surfaces or items on the Premises. If you believe it necessary to touch surfaces or items in the Premises, consider the risks of doing so.
E. After viewing the Premises, discard any gloves, masks, or shoe coverings worn during the visit and wash hands with soap and water for at least twenty seconds.
7. ALL SIGNERS REPRESENTATIONS:
A. You understand that allowing access to or accessing a property for any of the purposes above may be dangerous or unsafe and could expose you or others to COVID-19 and that you are allowing or conducting those activities voluntarily.
B. You represent that:
(1) To the best of your knowledge, you are not currently afflicted with, and have not knowingly, within the last 14 days, been in contact with someone afflicted with, COVID-19;
(2) You are not experiencing a fever, or signs of respiratory illness such as cough, shortness of breath or difficulty breathing, or other COVID-19 symptoms and;
(3) You understand that persons may be afflicted with COVID-19 and: (i) not exhibit symptoms; (ii) not be aware that they are afflicted or (iii) may not voluntarily agree to disclose their condition.
C. You will inform Broker if, after the date this document is signed, there is a change in your health condition or knowledge that potentially puts others at risk or invalidates the representations made in this document.
8. EXCEPTIONS TO REPRESENTATIONS AND ADDITIONAL TERMS:



9. **AGREEMENT, DECLARATION AND ASSUMPTION OF RISK:** By signing below, you are declaring the foregoing is true, that you agree to take all recommended and reasonable actions to protect yourself and others from exposure to COVID-19, and that you **ASSUME THE RISK**, as applicable, of entering the Premises, or allowing someone to enter the Premises. You understand and agree that no one, including but not limited to real estate brokers and agents, can guarantee that you will not be exposed to or contract COVID-19.

By signing below, the person allowing entry or the person entering Premises acknowledges that Signer has read, understands, voluntarily agrees to the foregoing, and has received a copy of this Coronavirus Lease/Rental Property Entry Advisory and Declaration.

Person allowing entry or person entering Premises: Landlord/Lessor, Tenant/Lessee, Broker/Agent, Other Entrant or Occupant

(print name) (signature) _____ Date _____

(print name) (signature) _____ Date _____

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS SIGNED PEAD-LR FORM.

Tenant/Lessee's Broker/Agent's Initials (_____)

Landlord/Lessor's Broker/Agent's Initials (_____)

Landlord/Lessor's Initials (_____) (_____)

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CORONAVIRUS LEASE/RENTAL PROPERTY ENTRY ADVISORY AND DECLARATION (PEAD-LR PAGE 2 OF 2)