March 23, 2020
California Governor's Executive Order Aimed at Assisting Borrowers, Tenants, Renters, and Homeowners Affected by COVID-19

As the widespread economic impacts of the coronavirus (COVID-19) worsen, Governor Gavin Newsom issued [Executive Order N-28-20](#) (order) on March 16, 2020, to assist Californians experiencing financial hardship. The order implements measures specifically aimed at helping those that have lost their source of income due to business closures or layoffs in the wake of COVID-19. The governor's directives focus on freezing evictions and foreclosures through May 31, 2020.

Tenant Protections

Eviction Restrictions

The order removes statutory restrictions on local governments, thereby allowing local governments to impose eviction restrictions, including a suspension on **residential or commercial** evictions, for tenants who are unable to pay their rent because of COVID-19. The order does not empower local governments to place a moratorium on **all** evictions. The reason for eviction must be linked to the coronavirus pandemic. Additionally, the order is **not** intended to relieve a tenant of their obligation to pay rent or limit a landlord's ability to cover rent due.

Local governments may protect residential tenants from evictions for nonpayment of rent where:

1. The household experienced either a substantial decrease in income (e.g., due to a layoff or reduction in hours), or substantial out-of-pocket medical expenses
2. The loss of income or medical expenses were caused by COVID-19 or the government's response to COVID-19, such as shelter-in-place or similar orders

Local governments may protect commercial tenants from evictions for nonpayment of rent in cases where:

1. The business experienced a substantial decrease in income
2. The loss of income was caused by COVID-19 or the government's response to COVID-19 (e.g., due to a reduction in hours of operation because of decreased consumer demand or closure due to government orders)

Because the order is not a statewide eviction moratorium, landlords and tenants must look to whether their local government has adopted coronavirus eviction protections. Many local governments have already issued coronavirus-specific eviction restrictions. The California Apartment Association is tracking [California county-level measures](#), and the National Low Income Housing Coalition is [tracking federal and state level measures](#).

Anti-Price Gouging

The order also extends California's anti-price gouging law that prohibits a landlord from evicting a tenant and then charging the new tenant a rent higher than could have been legally charged to the evicted tenant through May 31, 2020.

Governor Requests Moratorium on Bank Foreclosures

The order also requests that financial institutions such as banks and credit institutions implement a moratorium on residential and commercial foreclosures and related evictions. Like the restrictions on evictions, the reason for the foreclosure must be linked to loss of income due to COVID-19.

The governor stopped short of directing financial institutions to halt coronavirus-related foreclosures. This may be due to concerns that a directive would violate the takings clause of the U.S. Constitution requiring the government to pay just compensation for taking private property. However, in interpreting the contracts clause of the Constitution, the U.S. Supreme Court upheld a state's temporary moratorium on foreclosures during the Great Depression. While the order is similarly meant to provide relief during an economic downturn, there may be a concern if a mandatory moratorium was challenged the current makeup of the Supreme Court would result in a different outcome. It is also an open question whether legal challenge to a state request, rather than a directive, for a moratorium would be successful.

Lenders and financial institutions should take caution in denying this request, particularly as the requirements for government aid and federal assistance for banks have not been clearly stated or fleshed out. Federal banking regulators recently urged financial institutions to work constructively with borrowers, and committed to "favorably consider" retail banking services and lending activities such as the expansion of credit, loan modifications, and extensions that assist small businesses, under the Community Reinvestment Act. Under the order, it is unclear whether financial institutions may obtain direct or indirect COVID-19 relief. The order directs the California Department of Business Oversight to "engage with financial institutions to identify tools to provide relief from the threat of residential foreclosure and displacement." Government relief programs like mortgage subsidies or loans for affected homeowners would ultimately benefit lenders. Such programs would permit homeowners to continue to pay off their mortgage and lenders would not need to initiate eviction proceedings. Additionally, the order does not expressly prohibit the granting of relief directly to financial intuitions that comply with the governor's request to halt coronavirus-related evictions.

Federal and State Relief Efforts

The federal government and other states are putting forth similar directives:

- The governor of New York has announced a relief plan waiving mortgage payments for 90 days and late payments based on financial hardship, a grace period for loan modifications, and a suspension of foreclosures.
- The U.S. Department of Housing and Urban Development has released guidance urging mortgage servicers to halt pending foreclosures and refrain from initiating new foreclosures for 60 days for borrowers with single-family mortgages insured by the FHA.

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