

COVID-19: Tenant Protections and Responsibilities

What are the consequences of not paying my rent?

- If you fail to pay your rent in full and remain in your apartment, your landlord could decide to file an eviction action called an unlawful detainer (UD). The landlord can file a UD even if most of the rent has been paid. There are several negative consequences of having a UD filed against you. Just the filing of the UD can cause your name to be listed on the Unlawful Detainer Registry, which is like a credit reporting agency. Many CA landlords subscribe to the UD Registry and will not rent to people who are listed in the registry. In addition, the UD will appear in your credit report if the landlord gets a judgment against you.
- An eviction does not relieve you of your obligations under the lease. In addition to a court order giving the landlord the right to regain possession of your apartment, the judge will order that you pay rent through the end of the lease or until the landlord finds a replacement tenant. The court also will order you to pay any costs the landlord incurs in trying to find a replacement tenant. If your lease has an “attorney’s fees” provision (and most do), then the court will order you to pay the attorney’s fees, up to any limit noted in the lease, and court costs.
- You and all of your roommates who are on the lease and signed it are jointly and severally liable. Joint and several liability is a legal term that means that each of you is liable for the full amount of the rent and the full amount of any damage to the apartment. It also would include any guarantors. So if one of your roommates fails to pay rent, the landlord can look to any or all of the other tenants or guarantors to pay that person’s share of the rent.
- Joint and several liability also means that the landlord would name all of the tenants and their guarantors in any lawsuit for nonpayment of rent or damage to the apartment or for eviction.
- Another consequence of joint and several liability is that one tenant cannot terminate the lease if other tenants are staying in the apartment. All tenants who signed the lease are considered to be one unit.
- If you fail to pay your rent in full even if you are not living in your unit, the landlord can sue you in court or send your unpaid rent bill to collection agencies. The collection agencies can report you to the credit reporting agencies and even sue you.

Am I protected by an eviction moratorium?

If you receive a 3 Day Notice to Pay Rent or Quit or a Summons and Complaint for Unlawful Detainer, you should consult an attorney IMMEDIATELY. Evictions proceed in a

VERY short timeframe in the absence of the moratoria described below, and there is no guarantee that all landlords will comply with the moratoria requirements.

State of California

Governor Newsom signed a law effective August 31, 2020 protecting tenants, small landlords, and homeowners: The Tenant, Homeowner and Small Landlord Relief and Stabilization Act of 2020. The COVID-19 Tenant Relief Act (CTRA) part of the larger Act provides relief for tenants who are unable to pay rent due to financial distress related to COVID-19. The Eviction Protection and Relief Act (effective January 29, 2021) extends the core protections of the CTRA and establishes the State Rental Assistance Program which provides rental assistance for landlords and tenants.

The financial distress under the CTRA can be any of the following:

- Loss of income because of the pandemic.
- Increased out of pocket expenses directly related to the performance of essential work during the pandemic.
- Increased expenses due to the health impact of COVID-19.
- Tenant's ability to earn income was limited due to childcare responsibilities or to care for the elderly, disabled, or sick family member resulting from COVID-19.
- Increased costs for childcare or to care for the elderly, disabled, or sick family member due to COVID-19.
- Other circumstances related to COVID-19 that have reduced the tenant's income or increased expenses.

The CTRA offers eviction protection for non-payment of rent during two time periods:

- Rent owed from March 1, 2020 – August 31, 2020
 - To start the eviction process, the landlord needs to give the tenant a notice to pay rent or quit. Before the pandemic, the tenant had to pay the rent within 3 days. The CTRA extends the notice time to 15 business days. Along with the Notice to Pay Rent or Quit, the landlord is required to give the tenant a notification describing the tenant's rights and obligations under the CTRA and a Declaration of COVID-19 financial distress form (Declaration). The tenant must complete the Declaration and return it to the landlord within 15 business days. Samples of the Notification and Declaration in 6 languages can be found at <https://landlordtenant.dre.ca.gov/landlord/forms.html>.
 - Landlords have the right to ask "high income" tenants to provide documentation of their COVID-19 related hardship. "High income" tenants are those whose

household income is more than 130% of the median household income in their county and is over \$100,000. The Los Angeles County median income is \$54,100 for a household of 1, \$61,850 for 2, \$69,550 for 3, and \$77,300 for 4.

- If the tenant fails to give the Declaration to the landlord within 15 days, then the landlord can file an Unlawful Detainer (UD). After a UD is filed, the tenant may submit the Declaration to the court to get eviction protections if the tenant has a “good reason” for not providing it to the landlord. “Good reasons” include mistakes, inadvertence, surprise, or excusable neglect.
- The tenant still owes the unpaid rent and will have until July 1, 2021 to pay it.
- If the tenant fails to pay the rent owed, the unpaid rent becomes rental debt, and the landlord can sue the tenant in small claims court to collect the debt. Before the CTRA, a landlord could sue for no more than \$10,000; the new law allows landlords to sue for the full amount of the unpaid rent in small claims court. The landlord may not file a small claims lawsuit until August 1, 2021. Landlords must attach documentation to their Claim that the landlord: made a good faith effort to investigate whether the Rental Assistance Program was available to the tenant; applied for the Rental Assistance Program on behalf of the tenant; or cooperated with the tenant to help obtain the rental assistance. Courts may reduce the amount of money awarded to landlords who refuse to participate in the Rental Assistance Program.
- Rent owed from September 1, 2020 – July 31, 2021
 - The same protections and obligations apply but tenants must pay the landlord 25% of the rent owed by July 31, 2021. The tenant may pay it at any time during the period of September 1, 2020 – July 31, 2021.
- The landlord must have “just cause” to evict a tenant between March 1, 2020 and June 30, 2021. Examples of “just cause” are using illegal drugs in the apartment, creating a nuisance by having loud parties, or health and safety violations. “Just cause” evictions were able to commence on September 2, 2020. The tenant is protected under the CTRA if the landlord claims “just cause” to evict but it is a pretense and the landlord actually seeks to evict the tenant for nonpayment of rent.
- On or before February 28, 2021, landlords must provide a notice to any tenants who have failed to pay at least one rental payment since March 1, 2020. The notice must include a description of their rights under Eviction Protection and Relief Act, including the State Rental Assistance Program (see below).
- The courts may not commence any eviction cases for nonpayment of rent until October 5, 2020 (e.g, if a tenant fails to provide the landlord with the Declaration within 15 days or for rent due before March 1, 2020). The courts also will not disclose eviction cases involving nonpayment of rent to the public until July 1, 2021.
- If a landlord engages in “self help” eviction activity, such as locking out tenants,

removing their possessions from the apartment, or shutting off utilities, then the tenant may seek an enhanced penalty of between \$1,000 and \$2,500 in addition to the pre-existing penalty of up to \$100/day plus damages through July 1, 2021.

- Landlords are limited in how they handle rent that tenants pay as well as fees that can be charged:
 - No late fees may be charged for late payment of rent if the tenant has provided the Declaration to the landlord.
 - Landlords may not increase fees or charge the tenant fees for services previously provided by the landlord for no charge.
 - Landlords may not apply a security deposit to the payment of COVID -19 rental debt unless the tenant agrees in writing.
 - Landlords must apply any rent payment to prospective rent unless the tenant agrees in writing that it can be applied to COVID-19 rental debt.
- Landlords may not sell or assign any COVID-19 rental debt that accrued during the period March 2, 2021 – June 30, 2021 until July 1, 2021. But landlords are permanently prohibited from selling or assigning the COVID-19 rental debt if the tenant would have qualified for rental assistance funding because their household income for 2020 is at or below 80% of the area median income. The Los Angeles County median income is \$54,100 for a household of 1, \$61,850 for 2, \$69,550 for 3, and \$77,300 for 4.
- A prospective tenant's COVID-19 rental debt may not be considered as a negative factor in evaluating whether to rent property to that tenant.
- Over a 12 month period, the landlord may not increase the rent more than 5% of the gross rental rate plus the percentage change in the cost of living, or 10%, whichever is lower, using the lowest gross rental rate charged for the immediately preceding 12 months.
- The CTRA allows moratoria enacted by cities that were in effect on August 19, 2020 to remain valid, even if they offer more protections than the CTRA, like the one in Los Angeles; the local moratoria may not be extended. But the repayment period for all deferred rent must end no later than March 31, 2022.

You should get written proof, such as a receipt, for any rent payments you make to the landlord.

State Rental Assistance Program

- The State Rental Assistance Program was created on January 29, 2021 to administer the \$2.65 billion in federal rental assistance that California will receive. The Program will use the federal eligibility guidelines, which prioritize households and communities that are disproportionately impacted by COVID-19.

- The California Department of Housing and Community Development has issued guidelines for the implementation of the Rental Assistance Program.
- Eligibility requirements:
 - Tenants whose household income for 2020 is at or below 80% of the area median income are eligible for this relief. The Los Angeles County median income is \$54,100 for a household of 1, \$61,850 for 2, \$69,550 for 3, and \$77,300 for 4. The funds may be used for rent, utilities, and other housing expenses incurred due to COVID-19.
 - BUT priority is given to households with income at or below 50% of the area median income and/or who have been recently unemployed.
 - Documentation is required to prove household income, such as 2020 tax returns, pay stubs, unemployment statements, or documentation that the household is receiving certain public benefits.
 - Households where at least one household member currently is unemployed and has been unemployed for at least 90 days also are eligible. Documentation of unemployment is required, including letters of termination, unemployment benefits applications, or proof of the expiration of those benefits.
 - Landlords may receive the rental assistance on behalf of their eligible tenants. Landlords can decide to participate in the program on a unit by unit basis. But sublessors may not receive the assistance.
- Funding guidelines:
 - Rental and utility arrears incurred between April 1, 2020 and March 31, 2021 receive the top priority.
 - Funding for current rent payments may not occur until all eligible rental and utility arrears payments have been made.
 - Landlords are strongly encouraged to work with their eligible tenants to apply for the rental assistance.
 - Landlords who submit an application on behalf of eligible tenants may receive up to 80% of the rent arrears during the eligible period. If landlords receive the assistance, they must agree to accept the 80% payment as payment in full and may not seek to recover the unpaid 20% from the tenants or seek to evict them for nonpayment of rent. The payment will be made directly to the landlord in one lump sum.
 - If a landlord refuses to participate, then the eligible tenant may apply directly

for rental assistance. But the tenant will receive only 25% of the rent arrears, which will be paid directly to the tenant.

- Eligible tenants who receive rental assistance are prioritized to receive assistance for 100% of unpaid utility bills incurred between April 1, 2020 and March 31, 2021. Assistance is limited to that 12 month period, and all utility payments will be made directly to the utility company on behalf of the eligible household.
- Landlords are required to provide a notice regarding the Rental Assistance Program to tenants who, as of February 1, 2021, have failed to make one or more rental payment during the period March 1, 2020 – June 30, 2021. The notice must be given before February 28, 2021.
- Tenants' and landlords' race, ethnicity, gender, immigration status, criminal record, disability, or gender or sexual identity may not be considered in the implementation of the Rental Assistance Program.

City of Los Angeles

- The City of Los Angeles has enacted more comprehensive eviction protections for all rental properties in the City of Los Angeles, which currently is effective until 12 months after the Mayor's Emergency Order has expired. Tenants cannot be evicted for failure to pay rent due to COVID-19:
 - If they have lost income due to workplace closures or reduced hours.
 - If they have loss of income or childcare expenses due to school closures.
 - If they have health care expenditures because the tenant or a family member has COVID-19.
 - If they have reasonable expenditures resulting from government ordered emergency measures.
- You should inform you landlord in writing before the rent is due if you are unable to pay rent for one of the reasons listed above. The Los Angeles Housing and Community Investment Department has created a COVID-19 Renters Protection Fact Sheet in 8 languages, which includes a form notice for tenants to give to landlords that they are unable to pay rent for one of the reasons covered by the eviction moratorium: <https://hcidla2.lacity.org/covid-19/renter-protections>.
- The City of Los Angeles eviction moratorium also prevents landlords from evicting tenants for reasons other than nonpayment of rent, such as to move in a family member or resident manager; if they have unauthorized occupants or pets; or for nuisance related to COVID-19.

- Landlords in the City of Los Angeles are prohibited from using fraud, intimidation, or coercion to make a tenant use any money received through a governmental relief program, like the stimulus checks, to pay rent or other charges demanded by the landlord.
- The City of Los Angeles eviction moratorium applies to all tenants regardless of immigration status.
- Landlords in the City of Los Angeles are prohibited from removing rental units from the market during the Emergency Order period, and tenants must be given 60 days after the expiration of the Order before the tenancy is terminated due to removal from the market.
- For Los Angeles rental units, tenants are required to pay the landlord the rent that is due, but they have one year after local emergency orders are lifted or until March 1, 2022, whichever comes first, in which to do so. All late fees and penalties are waived.
- **Tenants can sue their landlord for violations of the City of Los Angeles eviction moratorium.** Effective May 6, 2020, tenants can seek court orders to stop the attempted eviction and sue for money damages. The Court also can award a civil penalty of up to \$10,000 per violation, depending on the severity of the violation; if the tenant is older than 65 or disabled, the maximum civil penalty per violation is \$15,000. Tenants may not file a lawsuit until they give the landlord written notice of the alleged violation, and the landlord then has 15 days from receipt of the notice to cure the alleged violation.

Federal Center for Disease Control Order and the COVID-19 Stimulus Package of 12/21/20

- On September 1, 2020, the Center for Disease Control (CDC) issued an Order preventing landlords from evicting most residential tenants. The Order originally expired on December 31, 2020, but President Biden's Executive Order extended the moratorium until March 31, 2021. The basis of the Order is to prevent the spread of COVID-19.
- Because the City of Los Angeles and California eviction moratoria offer stronger eviction protections than the CDC Order, the Order does not apply in those jurisdictions.
- Tenants who are protected by the CDC Order must meet one of the following criteria:
 - Earn no more than \$99,000, or \$198,000 for a household of 2
 - Received a CARES Act stimulus check
 - Were not required to pay any federal taxes in 2019
- Tenants must provide the landlord a Declaration stating their qualifications for protection by the Order and sign it under penalty of perjury. Tenants should use this approved Declaration form: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>.
- Tenants still are obligated to pay all of the rent that is due, and the landlord can take legal steps to collect unpaid rent starting on January 1, 2021.

- Landlords who violate the CDC Order could be subject to fines of \$100,000 and a year in jail. Tenants who make false or misleading statements or omissions in their Declaration will be subject to civil and criminal penalties.
- The COVID-19 Stimulus Package also authorized \$25 billion to help tenants pay their rent and utility bills. These funds will be administered by state and local entities once procedures are in place.

Can my landlord raise my rent?

- The City of Los Angeles has ordered that landlords may not raise rents for rental property that is subject to the Los Angeles Rent Stabilization Ordinance (LARSO), aka rent control, during the City's Safer At Home Emergency Order and for one year after the Order expires. Currently, the maximum allowable rent increase under LARSO is 3%, but it will be effective only when rents are allowed to be increased. You can text "RSO" to (855) 880-7368 to find out if your unit is subject to LARSO.
- Under the State Covid-19 Tenant Relief Act, over a 12 month period, the landlord may not increase the rent more than 5% of the gross rental rate plus the percentage change in the cost of living, or 10%, whichever is lower, using the lowest gross rental rate charged for the immediately preceding 12 months,

Can I terminate my lease due to COVID-19?

- Although legal grounds to terminate a lease in CA must be analyzed on a case by case basis, **in general the COVID-19 outbreak is NOT a ground to terminate a lease. Similarly, UCLA's decision to offer only online instruction for spring and fall quarters 2020, financial hardship, and mental distress generally are NOT grounds to terminate a lease.**
- There may be an exception to this general rule. There may be a legal argument favoring termination if the tenant is immunocompromised and there is a greater risk of infection in the rental property than another abode where the tenant could reside (e.g., family residence). You will need to consult with an attorney to make this legal argument.
- There may be other legal grounds to support the tenant's ability to terminate a lease.
 - There currently is a condition in the apartment that renders it uninhabitable, and the landlord is notified of the condition and fails to repair it. CA Civil Code section 1942. **You should consult an attorney before attempting to terminate your lease using this statute, as this legal ground is not available for most repair issues.**
 - Some leases, although not most, have a provision that allows termination if the tenant agrees to pay a fee. Landlords are required to provide a copy of the lease to tenants pursuant to CA Civil Code section 1962.

- *Force majeure* clauses are extremely rare in residential leases. They are more commonly found in commercial leases. If your lease has a *force majeure* clause, it would need to specifically list pandemic as one of the reasons to trigger the clause. **You should consult an attorney before attempting to terminate your lease on *force majeure* grounds.**
- Tenants who have rental insurance should review their policy to see if it offers any relief in circumstances like a pandemic or where a national emergency has been declared.

What are my options if I do not have legal grounds to terminate my lease?

- With few exceptions, CA law requires a tenant to pay rent through the end of the term of the lease. You can try to negotiate with your landlord to relieve you of the burden of paying rent, but most landlords are not going to be open to an early termination as they rely on rent to pay the mortgage, insurance, and property taxes on the property.
- When you negotiate with your landlord, be respectful and reasonable. Being angry, rude, or belligerent are not winning techniques. Explain your situation calmly and thoroughly, and explore any options that the landlord is willing to consider. You can ask if the landlord would be willing to reduce the amount of rent even if they will not agree to terminate the lease.
- **If the landlord agrees to any changes in the lease terms, you MUST get them in writing.** Technically, they are not enforceable unless they are in a writing signed by all parties to the agreement. An agreement reached via email, text, or social media is a workable alternative if the signed writing is not possible, but be sure to save it in a way that you can access easily if the landlord later backs out of the agreement.
- One option is to ask the landlord if you can sublease your apartment. Most leases require tenants to get the landlord's written consent to sublease. Under CA law, landlords should act in good faith when determining whether to consent to the sublease. Some landlords require prospective sublessees to go through the application process and have a credit check.

What are the pros and cons of subleasing?

- It is very important that you have a written sublease to set forth all of the terms of the agreement. UCLA Student Legal Services has a form sublease agreement for tenants to use on its web site at <https://www.studentlegal.ucla.edu/assets/pdf/forms/SUBLEASE.pdf>.
- The biggest advantage of subleasing is that someone else is paying all or part of your rent. But given the large number of students who want to terminate their leases and find sublessees, you likely will need to greatly reduce the amount of rent you will ask your sublessee to pay. You need to consider whether it is better to get some money to defray the cost of your rent or pay it all yourself. But there are risks.

- If you sublease either all or part of your apartment, you still remain liable under the terms of your lease with the landlord. So if your sublessee fails to pay rent or damages the apartment, the landlord will expect you to pay the rent or the cost of repairing the damage. This is why it is a good idea to ask for a deposit from the sublessee. Given the number of people looking for sublessees, however, you may have a hard time finding one who is willing to pay a deposit.
- Because the landlord has no contractual relationship with the sublessee, only you (as a master tenant) have the standing to evict a sublessee. Therefore, if the landlord wishes to evict the sublessee, they will have to evict you (even if you are not at fault).
- Another possible risk is that the sublessee may not leave the apartment when the lease ends. This is particularly problematic if the sublessee has stopped paying rent. If the sublessee continues to live in the apartment after the lease terminates, the landlord may decide to file an eviction action. See the first section on page 1 for the consequences of an eviction action.
- If some of your roommates are staying in the apartment, there may be an issue if your roommates do not approve of your sublessee. If you have a roommate agreement, either written or oral, then the terms of the agreement would govern what type of permission may be necessary.

Where can I get help?

- Currently registered UCLA students may get legal assistance regarding any landlord-tenant matter from **UCLA Student Legal Services**. Please complete the form at this link to request an appointment: <https://www.studentlegal.ucla.edu/intake-form.php>. Student Legal Services is offering appointments by Zoom and is waiving all fees; there are no in-person services. You also can contact Student Legal Services at slegal@saonet.ucla.edu and 310.825.9894. Student Legal Services is located in A239 Murphy Hall, but all work currently is being done remotely.
- There is substantial legal content and a comprehensive list of community resources on the SLgS web site: www.studentlegal.ucla.edu.