

NEW COMMERCIAL EVICTION SUITS HAVE BEEN HALTED UNTIL FURTHER NOTICE

Author(s): Alison E. Geddes

Two days ago, the Judicial Council of California, which governs all of California's courts, enacted emergency rules which curtail the ability of property owners to bring new unlawful detainer actions and change the courts' procedures for all pending unlawful detainer actions. Initially, the Governor's earlier directive affected residential tenants. Now, although the emergency rules are temporary, they dramatically change the legal rights of both commercial and residential property owners. These new rules are effective immediately and will remain in effect until 90 days after Governor Newsom lifts the State of Emergency pertaining to COVID-19, unless they are first modified. Where does this leave commercial property owners?

NEW UNLAWFUL DETAINER CASES - COURTS CANNOT ISSUE SUMMONS UNLESS HEALTH AND SAFETY IMPLICATED

Ordinarily, to commence an unlawful detainer case, a property owner will file a Complaint for Unlawful Detainer with the court and a court clerk will immediately issue a Summons. The Summons and Complaint must then be served upon the occupants of the property. Under the new emergency rules, California courts cannot issue a Summons on a Complaint for Unlawful Detainer unless the court first determines that the unlawful detainer action is necessary to protect public health and safety. In the event that a tenant's actions are endangering the health and safety of the public, property owners will need to provide evidence of the danger to the court before the court will allow the lawsuit to proceed.

Landlords temporarily cannot advance unlawful detainer cases based upon non-payment of rent and the most common lease covenant violations, such as a tenant's failure to surrender possession after the expiration of the lease term, unauthorized assignments of leases, failure to construct tenant improvements, or failure to open and operate. The only unlawful detainer

cases which will be allowed to proceed are those in which the landlord can prove are necessary to protect health and safety.

PENDING UNLAWFUL DETAINER CASES - IMPACT TO ISSUANCE OF DEFAULT JUDGMENTS AND TRIAL SETTING

For those actions which were filed prior to the court closures in March or which are allowed to proceed to protect health and safety, the court cannot enter a judgment by default following the tenant's failure to file a responsive pleading in the case unless the court finds both of the following: (1) the action is necessary to protect public health and safety and (2) the tenant has not appeared in the time provided by law, as extended by any applicable executive order. Courts will not automatically issue default judgments in active cases in which the defendant tenants have not appeared as is typically the applicable procedure.

In addition, the courts will delay the trials of all unlawful detainer actions. Trials in unlawful detainer cases now cannot be set less than 60 days after a request to set the matter for trial is made unless the court finds that an earlier trial date is necessary to protect public health and safety. All trial dates which were set for proceeding as of April 6, 2020, must be continued at least 60 days after their initial trial dates.

RATIONALE FOR IMPOSITION OF THE TEMPORARY EMERGENCY RULES

In advancing the temporary emergency rules, the Judicial Council used the following rationale:

At a time when people are being urged to stay at home to protect public health and safety, unlawful detainers are particularly problematic for two reasons: (1) they require very fast legal responses (within five days) from defendants who are often self-represented and at a time when court self-help centers and legal aid services are not readily available; (2) when involving residential property, they threaten to remove people from the very homes they have been instructed to remain in. In addition, the number of such actions for both commercial and residential properties is likely to explode in coming months—as a significant portion of the population faces severe economic losses due to the closing of businesses, loss of income, and inability to work due to illness or the need for childcare in light of stay-at-home orders—resulting in a surge of unlawful detainer filings and trials in the courts.

In her introductory remarks to the Judicial Council on Monday in support of the implementation of these emergency rules, Chief Justice Tani Cantil-Sakauye stated “[w]e are at this point truly with no guidance in history, law or precedent. To say that there is no playbook is a gross understatement of the situation... The Judicial Branch is doing its part by contributing to solutions that require government and the public we serve to work together, to share a collective and individual responsibility, and to do the right thing.”

WHERE DOES THIS LEAVE PROPERTY OWNERS?

While the court system is largely unavailable to property owners who would like to terminate tenancies at the moment, there are still legal tactics that can be used to address tenant defaults and manage tenancies. We are still able to proceed with all pending unlawful detainer lawsuits, although they will proceed at a slower pace than normal.

We encourage property owners to contact experienced real estate attorneys regarding their tenancies to obtain advice and assistance with any legal issues which exist during this unprecedented time. For more information regarding these Emergency Rules and how they may affect your properties, please contact Alison Geddes at Trainor Fairbrook.