Berkeley Eviction Moratorium

The City of Berkeley’s ordinance prohibits eviction of any tenant based on non-payment of rent due to a material decrease in household or business income or material out-of-pocket medical expenses related to COVID-19. Berkeley’s ordinance also prohibits “no-fault” eviction of a tenant of residential property, unless necessary for the health and safety of tenants, neighbors, or the landlord. The City has also enacted an emergency regulation that allows landlords and tenants to agree to discounted rent during the state of emergency without reducing the lawful rent ceiling under Berkeley’s rent ordinance.

Note: CAA recommends that an attorney be used for preparation of any termination notices or eviction filings during the current local emergency.

Effective Date: The eviction moratorium ordinance took effect March 17. The emergency regulation regarding discounted rent took effect on April 3, 2020.

Duration: The moratorium applies throughout the local state of emergency.

Definition of Financial Impacts Related to COVID-19: A material decrease in household or business income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand) caused by the COVID-19 pandemic, or by local, state or federal government response to COVID-19, or material out-of-pocket medical expenses related to COVID-19.

Deadline for Tenant to Provide Notice and Documentation of Inability to Pay to Landlord: The ordinance specified several opportunities for the tenant to provide notice and documentation: (1) prior to the rent due date; (2) within three days (excluding weekends and holidays) of receiving a “pre-notice of rent delinquency from the landlord; (3) after service of a three-day notice to pay rent or quit; or (4) as a defense to an unlawful detainer action.

Documentation Requirement: The material decrease in income or increase in medical expenses must be documented when the tenant provides notice of inability to pay due to COVID-19.

Deadline for Payment of Rent Subject to Moratorium: The ordinance provides that the landlord “may seek” the unpaid rent “after the expiration of the local State of Emergency.” Administrative regulations adopted by the city specify that a tenant must pay any delayed rent within 6 months of expiration of the local state of emergency. After that expiration, a landlord may not credit future rent payments against the delayed rent and must treat the delayed rent as a separate obligation.

Late Fees: Administrative regulations adopted by the city prohibit a landlord from charging or collecting late fees or interest on rent delayed pursuant to the moratorium.
**No Fault Eviction Moratorium:** “No fault” refers to “any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant.” However, the prohibition on no fault eviction does not prohibit withdrawal of accommodations from the rental market as provided in the Ellis Act.

**Landlord Requests for Waivers:** Landlords can request a complete or partial waiver of the ordinance based on a showing that applying the requirements of the ordinance would constitute a hardship, an unconstitutional taking of property, or otherwise have an unconstitutional application. Those requests need to be made in writing to the City Manager via electronic mail to cmo@cityofberkeley.info within 30 days of becoming aware their tenant is protected by the moratorium and must follow administrative regulations issued by the city (see link below).

**Emergency Regulation re: Discounted Rent:** This regulation provides that for tenancies that began on or after March 3, 2020, the landlord and tenant may agree in writing to a temporary rent reduction without reducing the lawful rent ceiling under Berkeley’s rent control ordinance. The City has made a template available for such an agreement.

**Berkeley Eviction Moratorium Ordinance**
www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/WEB_COVID-19%20Emerg.%20Response%20Ordinance_FINAL.pdf

**Berkeley Addition Information Including FAQ, Administrative Regulations, and Forms for Discounted Rent**
www.cityofberkeley.info/Rent_Stabilization_Board/Home/Can_t_Pay_Rent_Due_to_COVID-19_.aspx

**Sample Letter to Landlord from Tenants Financially Impacted by COVID-19:**