Frequently Asked Questions: Challenges with Rent Collection Related to the COVID-19 Pandemic

As anxiety over COVID-19 continues to grow, the California Apartment Association has received a flood of questions about how to handle the myriad issues expected with upcoming rent payments. The issues raised by the COVID-19 pandemic range from legal restrictions on the ability of landlords to collect rent from residents who have suffered a loss of income related to the pandemic, to practical considerations for how rental housing providers can protect themselves from the risk of contracting COVID-19 due to handling checks. The most frequently asked questions are addressed here.

1. Some of my residents seem to think they don’t have to pay rent due to the pandemic. How can I communicate to them that rent is still due while also being sensitive to the hardships many are facing?

CAA recommends that landlords send CAA’s sample resident letter to their residents – by email, regular mail, or other delivery method – before rent comes due. This letter invites residents who face COVID-19-related hardships to contact their landlord to discuss alternative payment arrangements, while also calling on residents who are not experiencing a hardship to continue to make rent payments on time.

CAA has also created a list of region-specific resources to assist residents who have suffered a loss of income due to the COVID-19 pandemic. Printable PDFs of these resources, which can be distributed to residents along with CAA’s sample resident letter, can be found on CAA’s Community Resources for Renters and Housing Providers webpage.

2. Can I choose to stop accepting in person rent payments, and only accept contactless payments such as online payment portals?

Your ability to limit the methods of payment you will accept depends largely on two factors: (1) what the law provides and (2) what your rental/lease agreement provides.

Under California law, you cannot offer electronic payment and/or cash as the only payment options; at least one other method of payment (such as check or money order) must be allowed. This means that you cannot mandate that your residents pay rent online.

In addition to the limitations imposed by law, you also need to review your rental/lease agreement to see what it says about how rent can be paid. If your rental/lease agreement allows rent to be paid in specified ways – for example in person or by check— you cannot refuse to accept those methods of payment unless you lawfully change the terms of the tenancy (see below for more information on changing the terms of the tenancy).

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3. I understand I may not be able to mandate that my residents pay rent online, but can I ask them to do so?

You can certainly encourage your residents to use online payment portals, and you can offer incentives for them to do so. For example, you could offer a “thank you” gift, such as a gift card, to residents who pay rent online during the COVID-19 pandemic.

CAA does not recommend entering residents into a raffle, as this may be considered an illegal lottery under California law, unless offered by a qualified non-profit organization.

4. I want to change the terms of the tenancy to not allow in-person payments. How do I do that?

First you will need to consider whether your residents have an unexpired fixed-term leases or are renting month-to-month. Unexpired fixed-term leases cannot be unilaterally changed by the landlord, although the landlord and tenant can mutually agree to change the terms of the lease.

Next, you will need to determine if the rental unit is subject to a local ordinance that limits your ability to change the terms of the tenancy. Such restrictions are often found in local just-cause eviction ordinances. For example, San Jose’s Tenant Protection Ordinance provides that terms added to the rental agreement after the initial agreement are only enforceable if they were accepted by the resident after the landlord notified the resident in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.

Assuming you are seeking to change the terms of the tenancy for a month-to-month resident, and the unit is not subject to a limitation on changing the terms of the tenancy, then you must provide 30 days’ notice of the change in terms of the tenancy to your resident. You can use CAA’s Notice of Change of Terms of Tenancy (Form CA-152) for this purpose. Note that because 30 days’ notice is required, this form cannot be used to affect a change in terms for rent due fewer than 30 days after the notice is served. For example, the notice would not be effective to change the policies in place on April 1 if it was served on March 31 but could be used to make changes effective on May 1 so long as the notice is served personally. If serving the notice by mail, you must add an additional five days to the notice period. For more information on how to use the form, reference the form instructions.

5. Can I require residents to mail in their rent payments?

Yes, provided you properly change the terms of the tenancy as described in Question 4, above. However, be aware that under California law if you do not provide an address for personal delivery of rent, a payment by mail is deemed received on the date posted. This means that, so long as the resident puts the rent in the mail by the due date, the rent is considered paid on time, and the resident cannot be assessed a late fee or otherwise penalized if the rent is delivered after the due date.

6. I have a rent drop box to limit in-person interactions, but I’m concerned about the coronavirus being spread to me via the envelopes, checks, and money orders submitted by residents. What can I do to protect myself?

Unfortunately, there is limited information about the risk of transmission due to touching objects that may have been handled by someone who is infected with COVID-19.

According to the CDC, the virus is thought to spread mainly from person-to-person between people who are in close contact with one another (within about 6 feet) and through respiratory droplets produced when an infected person coughs or sneezes.
CAA recommends that you follow the CDC guidance to avoid touching your eyes, nose, and mouth with unwashed hands, and to wash your hands often with soap and water for at least 20 seconds after handling rent payments.

7. I have a multi-unit property, and I’d like to avoid many people coming to the office at once to pay rent. What can I do?

As discussed above, you can encourage your residents to use no- and low-contact methods for paying rent, such as online rent payment portals and physical drop boxes. If your leasing office is still open, you could limit the number of individuals in the office at one time, and encourage those outside to maintain an appropriate distance from each other in line with the California Department of Public Health’s social distancing guidance.

You could also encourage your residents to follow a staggered schedule for when to come to the office (or drop box) to pay rent. For example, you could ask residents in odd-numbered units to drop of their rent during one window of time and ask residents in even numbered units to come during a different window of time. This would not be an enforceable policy but may help avoid a “run” on the office if residents cooperate.

8. My resident has notified me that they have been laid off due to the COVID-19 pandemic and won’t be able to pay next month’s rent. What can I do?

The COVID-19 pandemic has caused unprecedented hardship for a large number of people in California, and around the nation. The California Employment Development Department, which administers the state’s unemployment insurance program has seen more than 1 million new unemployment insurance claims filed since March 13.

CAA is asking rental housing providers to extend compassion to their residents and try to work with them in this difficult time. CAA’s Payment Plan Agreement (Form CA-263) can be used to set the terms of a repayment plan for residents who can’t afford to pay some or all of their rent due to the COVID-19 pandemic.

CAA’s Safe at Home Guidelines [Link the Guidelines] ask rental housing providers to halt evictions on residents who have been affected by the pandemic. CAA has also created a webpage dedicated to Community Resources for Renters and Housing Providers that includes a list of various government, nonprofit, and community-based resources to assist with housing, food, medical needs, and more.

To prevent affected renters from losing their housing during this crisis, more than 60 cities and counties in the state have enacted prohibitions on evicting residents who are unable to pay rent due to the COVID-19 pandemic. A general discussion of these moratoria can be found in Question 9, below. For more information on which cities and counties have enacted eviction moratoria, visit CAA’s COVID-19 Resource Center.

9. My resident has notified me that he has suffered a loss of income related to COVID-19 and will not be able to pay rent. What kind of proof can I require to verify his claim?

The answer to this question will depend on whether your rental unit is located in one of the more than 60 cities or counties that has adopted an eviction moratorium for residents affected by the COVID-19 pandemic. A full list of the cities and counties that have adopted such moratoria can be found on CAA’s COVID-19 Resource Center webpage, and a link to each local moratorium is included. The specifics of these moratoria vary, but in general, they prohibit a landlord from seeking to evict a resident for non-payment of rent if the resident’s inability to pay is caused by either: (a) a loss of income related to COVID-19, or (b) high medical or childcare expenses related to COVID-19. The moratoria then generally
require the resident to repay the past-due rent over time – ranging from 90 to 180 days – either after the ordinance expires, or after the state of emergency is lifted.

To qualify for protection under these ordinances, tenants are generally required to notify the landlord of their inability to pay the rent and provide documentation supporting their claim that their inability to pay is caused by the COVID-19 pandemic. Unfortunately, individual moratoria vary significantly on when tenants must provide this notice and documentation and what type of documentation is acceptable. CAA is preparing compliance materials for these moratoria. Some local governments, such as the City of Sacramento, have created forms and other materials to assist renters and landlords with compliance. To the extent such materials have been made available, CAA has provided links to those resources on the COVID-19 Resource Center, simply click on the city name or, in some instances, there is an “additional information available here” option provided next to the name of the city or county.

10. What if I can’t afford to pay my mortgage or other bills because my residents aren’t able to pay rent?

If your ability to pay the mortgage on your rental property is affected by residents’ non-payment of rent related to the pandemic, CAA strongly recommends reaching out to your lender to discuss forbearance options. On March 25, 2020, after more than a thousand rental housing providers took up CAA’s call to action, governor Gavin Newsom announced that Wells Fargo, US Bank, Citibank, and JP Morgan Chase, as well as 200 state chartered banks and credit unions, have agreed to a 90-day forbearance of mortgage payments for many smaller property owners impacted by COVID-19.

If you have suffered a loss in rental income due to the COVID-19 pandemic, you can also contact your insurance carrier to request a modified payment schedule. Many insurance companies are offering financial assistance to customers affected by COVID-19, such as by waiving late fees and granting grace periods for premium payments. The California insurance commissioner has specifically requested that all companies providing insurance in California give their insureds at least a 60-day grace period to pay their premiums. More information about what specific insurance carriers are doing to assist policy holders can be found in COVID-19 Resource Center.