



Quality Housing • Ethics • Professionalism



April 13, 2020

The Honorable Phil Ting
California State Assembly
State Capitol, Room 6026
Sacramento, CA 95814

RE: AB 828 (Ting) – Unlawful Detainer Moratorium – COVID-19 – Oppose

Dear Assembly Member Ting:

On behalf of the members of the California Apartment Association, I am writing to inform you that the organization has taken an oppose position on AB 828, your bill that, among other things, will unconstitutionally force a 25 percent reduction in rents and prohibit a court or sheriff from accepting for filing or taking any action in an unlawful detainer case while a state or local state of emergency related to the COVID-19 virus is in effect, except as narrowly provided in the bill.

Recognizing that we are in unprecedented times, CAA understands that tenants who have been truly affected by the COVID-19 virus need protections. In fact, they have already been granted extensive protections under existing state proclamations, judicial court rules, and local laws, including federal, state, and local financial assistance. AB 828, however, is a one-sided, unreasonable proposal that will harm both good tenants and responsible property owners; it will give nuisance tenants and those unethical organizations calling for rent strikes added incentive to wreak havoc in our communities. AB 828 is not a fair and balanced approach in these unprecedented times. Here's why:

In Violation of the State and Federal Constitution, AB 828 Forces a 25 Percent Reduction in Rents – In our current pandemic, after property owners have gone months without rent, AB 828 takes away additional rent owed by the tenant by requiring the courts to impair existing contractual obligations, in violation of the state and federal constitution, and mandate a rent reduction of 25 percent. We must remember that owners are already facing the following: a statewide halt on evictions of all types; a state of emergency that caps rents; local measures that freeze rents and provide extended deferrals of unpaid rent; and state and local rent control laws that, in some cases for years, have limited rent increases to less than inflation. Small property owners, owners in strict rent control jurisdictions, and owners who offer affordable housing will be especially harmed by this rent reduction. And it's important to note that, in general, many owners have already voluntarily forgiven or reduced rent because of this crisis.

AB 828 Gives Tenants Reduced Rent and Months to Repay Past Rent with No Proof of Hardship – Unfortunately, during this pandemic, some tenant organizations have irresponsibly urged all tenants to not pay rent, even if those tenants have been

unaffected financially by COVID-19 and are able to pay. AB 828 lends to this unethical action by allowing tenants to withhold rent with little to no proof of a hardship or inability to pay. Through the court process created by AB 828, a tenant need only show “increased costs for household necessities or reduced household earnings” in order to stay in the unit with reduced rent. This tenant “burden of proof” lends nothing to help the court make a ruling that the tenant could, in fact, have afforded to pay the rent. Even without a decrease in earnings, a tenant need only show an increased cost in household necessities (e.g., higher utility costs because they worked from home, added food costs because they chose to buy additional food while working from home) and this will give a tenant protection under the bill.

Even with No Proof, Courts Must Assume the Tenant Faced a Hardship – Notwithstanding the very limited burden on tenants to demonstrate a hardship, in the absence of evidence to the contrary – meaning the tenant need prove nothing – the court must assume that the tenant faced a hardship related to COVID-19 if it occurred any time between March 4, 2020 and March 4, 2021.

AB 828 Protects Nuisance Tenants – While AB 828 does allow a property owner to file an unlawful detainer complaint against a tenant who has caused a nuisance, harassed, or threatened other tenants at the property, that tenant is not required to answer the complaint. When the tenant does not answer, the court must proceed as if the tenant did answer the complaint and denied all claims. This means that the owner must take the next step to request a hearing before a judge. Tenants and unethical attorneys typically counter with a request for a jury trial simply as a way to delay the eviction. This request, along with additional meritless defenses, requests for discovery, and more, is intended solely to delay the case, allowing the nuisance tenant to stay in place for as long as 6 to 9 months. AB 828 gives these attorneys added leverage to help their bad-acting clients stay at the property for an extended period, harming the peace and quiet enjoyment of other tenants.

AB 828 Mandates that the Court Assume No Hardship for Owners of 10 or more Units – While AB 828 gives **all** tenants the benefit of the doubt, the bill adopts the assumption that owners of 10 or more units will not suffer a hardship under its provisions. That classification is arbitrary and unsupported by any rational basis. Moreover, it reveals ignorance of the expenses that property owners of this size have and are not able to forebear during this crisis.

AB 828 Requires Property Owners with Fewer than 10 Units to Demonstrate a Material Economic Hardship in Order to Convince the Court of Their Need for the Contracted Rent – While tenants are required to provide little to no proof that they experienced a hardship, the owner of fewer than 10 units must provide proof of their own economic hardship. Although the bill provides an incomprehensible definition of what constitutes an economic hardship on the part of the owner, the bill is specific in providing that an owner who uses all of his/her

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savings or other assets to keep the building operational and now has no other discretionary funds would not be considered to have experienced an economic hardship.

AB 828 Requires Owners to Go Back to Court and Pay Additional Costs If the Tenant Doesn't Pay the Reduced Rent as Initially Ordered – After the extended court process created by AB 828, after giving tenants a reduction in rent of 25 percent, and after giving a tenant months to repay past-due rent, a tenant who doesn't pay is granted additional time to stay while the owner goes back to court to explain the facts constituting the failure of the tenant to pay. It's an absurd mandate for a property owner to explain to the court why a tenant didn't pay; the bottom line is the tenant didn't pay. And only then may the court grant the owner possession of the unit. It is important to note, that at this point, the property owner can expect to recover no rent at the end of this extended process under AB 828.

AB 828 is a Ruse When it comes to Foreclosures or Any Assistance to the Owners It Burdens – AB 828 places significant financial hardships on rental housing owners, and it provides no assistance to help them bear those burdens. In addition to mortgage payments, property owners must pay property taxes and insurance premiums, not to mention the significant costs to manage and maintain their properties and paying employees in accordance with state and local laws. AB 828 offers nothing to help with those payments. With respect to mortgages specifically, AB 828 doesn't defer or reduce those payments as it does for the rent owed by tenants. Instead, it purports to halt foreclosures, an action that does not actually help the owner in the long term and is illusory given inevitable lender legal challenges to those provisions.

The California Apartment Association is the largest statewide rental housing trade association in the country, representing over 50,000 single-family and multifamily apartment owners and property managers who are responsible for over 2 million affordable and market-rate rental units throughout the State of California.

Sincerely,

CALIFORNIA APARTMENT ASSOCIATION



By
Debra Carlton
Executive Vice President
State Public Affairs & Compliance