

1. Introduction

As we know, the economic upheaval caused by the COVID-19 crisis is causing millions to lose income, making it difficult to pay rent. The Governor issued an initial Executive Order on this topic, N-28-20 (“March 16 EO”), which did not provide statewide protections for tenants. Last week, 43 legislators sent a letter asking him to further strengthen protections. On Friday, the Governor issued a second Executive Order on the topic, N-37-20 (“March 27 EO”). While the March 27 EO is being touted as an eviction moratorium, it is important to note that it is not.

2. What the March 27 EO does

Ordinarily, a residential tenant who is sued for not paying rent has five court days (days when courts are open) to file an answer to their landlord’s eviction lawsuit. The March 27 EO gives tenants who are now unable to pay their full rent, for reasons related to COVID-19, an extra sixty calendar days to answer—but only if they (a) were previously current on their rent, (b) notify their landlords in writing of their inability to pay, either before rent is due or seven days thereafter, and (c) have documentation of their inability to pay. It also forbids county sheriffs from evicting tenants who meet these requirements. The EO’s protections last until May 31, 2020.

3. What the March 27 EO does not do

The EO does not do any of the following:

- Prevent eviction lawsuits from being filed, even if a tenant complies with the above requirements.
- Protect commercial tenants, including small businesses, from eviction.
- Specify how courts are supposed to know that tenants are entitled to an extra 60 days. Unscrupulous landlords can still seek to evict tenants who don’t answer in the usual 5 days.
- Specify how sheriffs are supposed to know that tenants are entitled to the extra 60 days. This may lead to evictions of tenants who are, for example, seeking medical treatment when the sheriff comes to enforce a lock-out order.
- Halt or alter any aspect of the eviction process that requires people to travel to, and gather in, courthouses—potentially spreading coronavirus.
- Explicitly state that local ordinances which are more protective of tenants are still in effect. Approximately 70 of California’s 540 local governments have enacted some level of eviction protection during this crisis.
- Halt no-fault evictions, such as for property renovations.
- Provide any means for tenants to become current on their back rent and avoid eviction after May 31, 2020.

4. What at-risk tenants should do immediately

If a tenant wants to take advantage of the protections in the March 27 EO for upcoming April 1st or May 1st rent due dates, they should:

- i. Notify their landlord **in writing** no later than April 7, 2020, and again (if they are still unable to pay their full rent) no later than May 7, 2020, of their inability to pay rent. This could be by email, text message, or something handwritten or typed that they deliver or mail to their landlord so that it reaches by the 7th. They should make and keep multiple copies of the writing that they can show the court or the sheriff.
- ii. If they receive a notice to pay rent or quit, and are then served with an unlawful detainer (eviction) complaint for non-payment of rent, they should immediately (a) file with the court Judicial Council Form MC-030, (b) state in the form that they are requesting a 60-day extension of time to respond based on Executive Order N-37-20, and (c) attach a copy of the written notice they provided their landlord. Link to the form: <https://www.courts.ca.gov/documents/mc030.pdf>
- iii. Keep all documentation of their inability to pay rent in a form that they can show their landlord, the court, and the sheriff. Examples of documentation include employment termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters or statements from an employer or supervisor explaining the tenant's changed financial circumstances.
- iv. Save up what they can to pay back rent when the March 27 EO's protections expire.

In addition, tenants should research what additional eviction protections their local government has put into place. Low-income tenants may be eligible for free legal services through local legal aid nonprofits. A list is available at <https://lawhelpca.org>.