

# Kimball, Tirey & St. John LLP

## Legal Alert

### Judicial Council Rescinds Rule 1 on September 1, 2020

August 18, 2020

On August 13, 2020, the Judicial Council voted to end [Emergency Rule 1](#) as of midnight on **September 1, 2020**. The Judicial Council's [circulating order](#) modifying Emergency Rule 1 allows new evictions to be filed beginning September 2, 2020.

[Emergency Rule 1](#) was originally adopted on April 6, 2020. It prohibits courts throughout the state (until September 2, 2020) from issuing a summons for an unlawful detainer or entering a default judgment against a tenant except under the very limited exception of evictions that were deemed necessary by a judge to protect "public health and safety."

In response to the Judicial Council's action, KTS filed an Application to Rescind Emergency Rule 1 on July 8, 2020, which in addition to highlighting the fact that [Emergency Rule 1](#) was unconstitutional, included a lengthy list of examples where landlords had attempted to evict problem tenants for serious lease violations (including attempted murder, assault, prostitution, etc.), but the court refused to allow the case to move forward. KTS's application included the names of over 100 "supporters," comprised of owners, law firms, management companies, apartment associations and other real estate organizations. Thank you to everyone who agreed to be listed as a supporter on our application, and also to those who sent emails and letters to the Judicial Council in support of our application.

With [Emergency Rule 1](#) set to sunset on September 1, 2020, does that mean landlords can file evictions for nonpayment of rent or other lease violations on September 2, 2020? Not necessarily. There are several factors to consider:

- 1) **Local Moratoria:** Is your property subject to a local moratorium? Has that moratorium expired? The governor passed executive order N-71-20 that allows local governments to extend their eviction moratoria expiration date until September 30, 2020, and many (but not all) have done so. Even if a local moratorium has expired, there may be language in the moratorium that provides your tenant with a specific amount of time to repay rent that accrued while the moratorium was in effect. KTS maintains a list of eviction moratoria at [www.kts-law.com](http://www.kts-law.com).
- 2) **CARES Act:** On March 27, 2020, Congress passed the CARES Act which prohibited landlords from filing an eviction against tenants living in "covered dwellings" for 120 days. Although CARES expired on July 26, 2020, Congress could pass CARES II at some point which may include additional protections for tenants residing in covered dwellings. Landlords seeking to collect rent that accrued during the moratorium now that CARES has expired must serve a 30-day notice instead of a 3-day notice. Keep in mind that if there is still a local moratorium in effect, you may not be able to serve a notice even though CARES expired. A link to the CARES Act is included on the KTS spreadsheet of eviction moratoria at [www.kts-law.com](http://www.kts-law.com).
- 3) **Pending Legislation:** There are two bills up for consideration in Sacramento at the moment: [AB 1436](#) and [SB 1410](#) and both are disastrous for landlords.

- a. [AB 1436](#) allows residents to defer rent until April 1, 2021. Tenants do not have to provide proof of a COVID-19 related financial hardship to be eligible for protection. They can “self-certify.” No late fees can be charged during this time. And if that wasn’t bad enough, for 12 months following April 1, 2021, landlords can’t evict for nonpayment of rent that accrued from March 4, 2020 to April 1, 2021, even if the tenant entered into a repayment agreement and then missed a payment. This bill also prevents landlords from reporting unpaid rent that accrued during March 4, 2020 to April 1, 2021. This bill has language to make it retroactive to March 4, 2020. Therefore, once it passes, if a landlord is in the middle of an eviction for nonpayment of rent, the landlord may have to dismiss your case.
- b. [SB 1410](#) is equally as bad. The idea behind [SB 1410](#) is that the landlord will forgive (not defer) rent that has accrued during the state of emergency once a COVID-19 eviction relief agreement is signed by the tenant. The tenant is supposed to then pay that rent back to the State of California over a 10-year period. The landlord, in place of the forgiven rent would receive a tax credit in 2024. This is not a voluntary program for the landlord as the bill requires the landlord to offer this agreement to the tenant. There is no specified date as to when the “state of emergency” will end. Moreover, the bill will be in effect until December 31, 2034. This bill does not just impact evictions related to nonpayment of rent. Under [SB 1410](#), landlords are prohibited from evicting a tenant for any reason unless it is related to “health and safety.” We’ve already seen the disastrous effects of that type of restriction while Emergency Rule 1 has been in effect.

Landlords need to continue to contact their elected officials in Sacramento between now and September 1, 2020, to oppose both bills in their current forms as they are still subject to change.

- 4) **Potential Executive Order:** It is uncertain if either bill is passed in the next few weeks when they would take effect. If the effective date is January 1, 2021, the governor may sign an executive order extending Emergency Rule 1-type protections to tenants in the interim.

The rescission of Emergency Rule 1 is an important victory for landlords whose voices continue to be ignored and discounted by our elected officials in this state. It is clear, however, that the fight is far from over and that what happens between now and September 1, 2020, could have devastating consequences on the rental housing industry for years to come.

*Please let us know how KTS can assist you during these challenging times. Our attorneys are available to assist you with any questions about these issues. Feel free to contact us [info@kts-law.com](mailto:info@kts-law.com).*

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