

COVID-19: Terminating a Lease and Eviction Protections

Can I terminate my lease due to COVID-19?

- Although legal grounds to terminate a lease in CA must be analyzed on a case by case basis, **in general the COVID-19 outbreak is NOT a ground to terminate a lease. Similarly, UCLA's decision to offer only online instruction for spring quarter 2020, financial hardship, and mental distress generally are NOT grounds to terminate a lease.**
- There may be an exception to this general rule. There may be a legal argument favoring termination if the tenant is immunocompromised and there is a greater risk of infection in the rental property than another abode where the tenant could reside (e.g., family residence). You will need to consult with an attorney to make this legal argument.
- There may be other legal grounds to support the tenant's ability to terminate a lease.
 - There currently is a condition in the apartment that renders it uninhabitable, and the landlord is notified of the condition and fails to repair it. CA Civil Code section 1942. **You should consult an attorney before attempting to terminate your lease using this statute, as this legal ground is not available for most repair issues.**
 - Some leases, although not most, have a provision that allows termination if the tenant agrees to pay a fee. Landlords are required to provide a copy of the lease to tenants pursuant to CA Civil Code section 1962.
 - *Force majeure* clauses are extremely rare in residential leases. They are more commonly found in commercial leases. If your lease has a *force majeure* clause, it would need to specifically list pandemic as one of the reasons to trigger the clause. **You should consult an attorney before attempting to terminate your lease on *force majeure* grounds.**
- Tenants who have rental insurance should review their policy to see if it offers any relief in circumstances like a pandemic or where a national emergency has been declared.

What are my options if I do not have legal grounds to terminate my lease?

- With few exceptions, CA law requires a tenant to pay rent through the end of the term of the lease. You can try to negotiate with your landlord to relieve you of the burden of paying rent, but most landlords are not going to be open to an early termination as they count on rent to pay the mortgage, insurance, and property taxes on the property.
- When you negotiate with your landlord, be respectful and reasonable. Being angry, rude, or belligerent are not winning techniques. Explain your situation calmly and thoroughly, and explore any options that the landlord is willing to consider. You can ask if the landlord would be willing to reduce the amount of rent even if they will not agree to terminate the lease.
- **If the landlord agrees to any changes in the lease terms, you MUST get them in writing.** Technically, they are not enforceable unless they are in a writing signed by all parties to the

agreement. An agreement reached via email, text, or social media is a workable alternative if the signed writing is not possible, but be sure to save it in a way that you can access easily if the landlord later backs out of the agreement.

- One option is to ask the landlord if you can sublease your apartment. Most leases require tenants to get the landlord's written consent to sublease. Under CA law, landlords should act in good faith when determining whether to consent to the sublease. Some landlords require prospective sublessees to go through the application process and have a credit check.

What are the pros and cons of subleasing?

- It is very important that you have a written sublease to set forth all of the terms of the agreement. UCLA Student Legal Services has a form sublease agreement for tenants to use on its web site at <https://www.studentlegal.ucla.edu/assets/pdf/forms/SUBLEASE.pdf>.
- The biggest advantage of subleasing is that someone else is paying all or part of your rent. But given the large number of students who want to terminate their leases and find sublessees, you likely will need to greatly reduce the amount of rent you will ask your sublessee to pay. You need to consider whether it is better to get some money to defray the cost of your rent or pay it all yourself. But there are risks.
- If you sublease either all or part of your apartment, you still remain liable under the terms of your lease with the landlord. So if your sublessee fails to pay rent or damages the apartment, the landlord will expect you to pay the rent or the cost of repairing the damage. This is why it is a good idea to ask for a deposit from the sublessee. Given the number of people looking for sublessees, however, you may have a hard time finding one who is willing to pay a deposit.
- Because the landlord has no contractual relationship with the sublessee, only you (as a master tenant) have the standing to evict a sublessee. Therefore, if the landlord wishes to evict the sublessee, they will have to evict you (even if you are not at fault).
- Another possible risk is that the sublessee may not leave the apartment when the lease ends. This is particularly problematic if the sublessee has stopped paying rent. If the sublessee continues to live in the apartment after the lease terminates, the landlord may decide to file an eviction action. See the section below for the consequences of an eviction action.
- If some of your roommates are staying in the apartment, there may be an issue if your roommates do not approve of your sublessee. If you have a roommate agreement, either written or oral, then the terms of the agreement would govern what type of permission may be necessary.

Can my landlord raise my rent?

- The City of Los Angeles has ordered that landlords may not raise rents for rental property that is subject to the Los Angeles Rent Stabilization Ordinance (LARSO), aka rent control, during the City's Safer At Home Emergency Order and for one year after the Order expires. Currently, the maximum allowable rent increase under LARSO is 4%, but a new rate will be set on July 1, 2020 for implementation only when rents are allowed to be increased. You can text "RSO" to (855) 880-7368 to find out if your unit is subject to LARSO.

What are the consequences of not paying my rent?

- If you fail to pay your rent in full, your landlord could decide to file an eviction action called an unlawful detainer (UD). The landlord can file a UD even if most of the rent has been paid. There are several negative consequences of having a UD filed against you. Just the filing of the UD can cause your name to be listed on the Unlawful Detainer Registry, which is like a credit reporting agency. Many CA landlords subscribe to the UD registry and will not rent to people who are listed in the registry. In addition, the UD will appear in your credit report if the landlord gets a judgment against you.
- An eviction does not relieve you of your obligations under the lease. In addition to a court order giving the landlord the right to regain possession of your apartment, the judge will order that you pay rent through the end of the lease or until the landlord finds a replacement tenant. The court also will order you to pay any costs the landlord incurs in trying to find a replacement tenant. If your lease has an “attorney’s fees” provision (and most do), then the court will order you to pay the attorney’s fees, up to any limit noted in the lease, and court costs.
- You and all of your roommates who are on the lease and signed it are jointly and severally liable. Joint and several liability is a legal term that means that each of you is liable for the full amount of the rent and the full amount of any damage to the apartment. It also would include any guarantors. So if one of your roommates fails to pay rent, the landlord can look to any or all of the other tenants or guarantors to pay that person’s share of the rent.
- Joint and several liability also means that the landlord would name all of the tenants and their guarantors in any lawsuit for nonpayment of rent or damage to the apartment or for eviction.
- Another consequence of joint and several liability is that one tenant cannot terminate the lease if other tenants are staying in the apartment. All tenants who signed the lease are considered to be one unit.
- Some landlords send accounts where the rent has not been paid in full to collection agencies. The collection agencies can report you to the credit reporting agencies and even sue you.

Am I protected by an eviction moratorium?

If you receive a 3 Day Notice to Pay Rent or Quit or a Summons and Complaint for Unlawful Detainer, you should consult an attorney IMMEDIATELY. Evictions proceed in a VERY short timeframe in the absence of the moratoria described below, and there is no guarantee that all landlords will comply with the moratoria requirements.

State of California

- On March 27, 2020, Governor Newsom announced a state-wide moratorium on eviction orders and their enforcement until May 31, 2020 for tenants who are unable to pay rent due to COVID-19:
 - If they have lost income due to COVID-19, the state of emergency, or related government response.

- If they are unable to work because they have COVID-19 or if they are caring for someone with the virus.
- If they are caring for children whose schools are closed.
- Under the Governor's order, all tenants must notify the landlord in writing before the rent is due or no later than 7 days after it is due that they are unable to pay and maintain documentation supporting the reason they are unable to pay. It only applies to tenants who are not in arrears in rent. Tenants remain liable to pay the rent due, and evictions may resume after the moratorium ends.
- The State of California Judicial Council adopted rule changes regarding evictions for all courts throughout the state on April 6, 2020. These changes will remain in effect until 90 days after the Governor lifts the state of emergency related to the COVID-19 pandemic. The rules prevent the courts from commencing eviction actions unless the eviction is necessary to protect public health and safety. For eviction actions that were filed before April 6, 2020, the courts may not enter a default because the defendant has failed to appear or set a trial for less than 60 days after the request for a trial is made unless it is necessary to protect public health and safety.

City of Los Angeles

- The City of Los Angeles has enacted more comprehensive eviction protections for all rental properties in the City of Los Angeles, which currently is effective until 12 months after the Mayor's Emergency Order has expired. Tenants cannot be evicted for failure to pay rent due to COVID-19:
 - If they have lost income due to work place closures or reduced hours.
 - If they have loss of income or child care expenses due to school closures.
 - If they have health care expenditures because the tenant or a family member has COVID-19.
 - If they have reasonable expenditures resulting from government ordered emergency measures.
- You should inform you landlord in writing before the rent is due if you are unable to pay rent for one of the reasons listed above. The Los Angeles Housing and Community Investment Department has created a COVID-19 Renters Protection Fact Sheet, which includes a form notice for tenants to give to landlords that they are unable to pay rent for one of the reasons covered by the eviction moratorium: https://hcidla.lacity.org/system/files_force/documents/covid-19_eviction_protections_fact_sheet.pdf?download=0.
- The City of Los Angeles eviction moratorium also prevents landlords from evicting tenants for reasons other than nonpayment of rent, such as to move in a family member or resident manager; if they have unauthorized occupants or pets; or for nuisance related to COVID-19.
- Landlords in the City of Los Angeles are prohibited from using fraud, intimidation, or coercion to make a tenant use any money received through a governmental relief program, like the stimulus checks, to pay rent or other charges demanded by the landlord.

- The City of Los Angeles eviction moratorium applies to all tenants regardless of immigration status. However, **you should consult an attorney before failing to pay your rent if you plan to apply for an immigration benefit or admission to the United States prior to paying all past due rent, as it may be considered a negative factor in assessing whether you will be inadmissible as a public charge.** Neither the Department of Homeland Security nor the Department of State has issued specific guidance as to whether failure to pay rent under the eviction moratorium will be used in assessing an individual's likelihood to become a public charge, and therefore inadmissible to the United States.
- Landlords in the City of Los Angeles are prohibited from removing rental units from the market during the Emergency Order period, and tenants must be given 60 days after the expiration of the Order before the tenancy is terminated due to removal from the market.
- For Los Angeles rental units, tenants are required to pay the landlord the rent that is due, but they have one year after local emergency orders are lifted in which to do so. All late fees and penalties are waived.
- **Tenants can sue their landlord for violations of the City of Los Angeles eviction moratorium.** Effective May 6, 2020, tenants can seek court orders to stop the attempted eviction and sue for money damages. The Court also can award a civil penalty of up to \$10,000 per violation, depending on the severity of the violation; if the tenant is older than 65 or disabled, the maximum civil penalty per violation is \$15,000. Tenants may not file a lawsuit until they give the landlord written notice of the alleged violation, and the landlord then has 15 days from receipt of the notice to cure the alleged violation.

Federal CARES Act

- Under the CARES Act, there is a nation-wide eviction moratorium for lessors of “covered properties,” which constitutes a limited segment of rental properties. “Covered properties” are those where an agency of the federal government has backed or purchased the mortgage held by the owner of the rental property. Property in certain federal programs, such as Section 8 housing, also are covered properties.
- The federal eviction moratorium went into effect on March 27, 2020, and extends for 120 days, until July 25, 2020.
- The federal eviction moratorium prevents lessors of covered properties from filing new evictions for nonpayment of rent and prohibits the lessor from charging fees, penalties, and other charges related to nonpayment of rent. After the moratorium ends, the lessor cannot evict a tenant except on 30 days’ notice. It is unclear if the moratorium applies to evictions allegedly based on reasons other than nonpayment of rent but that actually are motivated by the nonpayment.
- The federal eviction moratorium does NOT affect cases: 1. That were filed before the moratorium took effect or after it ends; 2. That involve tenancies in non-covered properties; and 3. Where the eviction is for reasons other than nonpayment rent (e.g., violating a term of the lease such as having tenants who are not on the lease live in the unit, using drugs illegally in the unit, or creating a nuisance by having loud parties).

- It can be challenging for a tenant to know if the landlord's mortgage is backed by the federal government. Many landlords will be reluctant to disclose this information to the tenants, and there is no requirement in the CARES Act that mandates such a disclosure.
- The CARES Act also provides for forbearance for lessor's mortgage payments for covered properties. If a lessor takes advantage of the forbearance and delays monthly payments on its mortgage, the lessor must extend the same forbearance to tenants' rent payments for covered properties that have 5 or more units.

Where can I get help?

- Currently registered UCLA students may get legal assistance regarding any landlord-tenant matter from **UCLA Student Legal Services**. Please complete the form at this link to request an appointment: <https://www.studentlegal.ucla.edu/intake-form.php>. Student Legal Services is offering appointments by Zoom and waiving all fees; there are no in-person services. You also can contact Student Legal Services at slegal@saonet.ucla.edu and 310.825.9894. Student Legal Services is located in A239 Murphy Hall, but all work is being done remotely.
- There is substantial legal content and a comprehensive list of community resources on the SLgS web site: www.studentlegal.ucla.edu.