



Statement on Governor Newsom's March 16, 2020 Executive Order Regarding COVID-19 and Housing

Western Center, ACLU of California, and the Lawyers' Committee for Civil Rights appreciate the hard work of Governor Newsom and his team during this extremely difficult time, and appreciate his recognition of the particular hardship posed by potential evictions and utility shutoffs during a public health crisis. The Governor's [Executive Order](#), however, stops short of implementing the full range of protections needed to ensure that vulnerable Californians are not forced to visit crowded courthouses, displaced from their homes, or disrupted by losing access to vital utilities as a result of the pandemic.

We call on the Governor to issue a blanket moratorium on all evictions and utility shutoffs for the state of California.

As organizations dedicated to protecting and advancing the rights of Californians living in poverty, we offer our brief analysis of the Governor's Executive Order, and suggestions for additional measures needed to ensure that all members of our communities are truly protected from the risks created by the ongoing COVID-19 pandemic.

1. *Waiving time limitations in Penal Code Section 396(f)*

Penal Code Section 396 involves penalties for price gouging during periods of declared emergencies. Subsection (f) specifically relates to price gouging in rental housing and penalizes landlords for evicting tenants in order to increase the rent for a subsequent renter. The states of emergency declared for wildfires provide recent examples of the need for a ban on rental price gouging during public emergencies. In places devastated by fires, landlords were prevented from evicting households in order to demand higher rents as a way to take advantage of the suddenly deeply constrained housing supply.

Subdivision (f) provides that price gouging bans in rental housing will extend for 30 days following the emergency declaration. Section One of the Executive Order from the Governor extends that period for more than a month, until the end of May. The extension of the period preventing rent gouging is positive, but it does little to keep people housed during a public health crisis, where evictions may not be based on an intent to subsequently raise the rent and where the entire machinery of eviction needs to be restricted. Penalizing price gouging does not adequately address the need to protect people from displacement during this pandemic.

2. Restrictions on Evictions Due to Documented COVID-19 Related Loss of Income

Rather than implementing the statewide ban on evictions that advocates and legislators have called for, the Executive Order expands a local government's authority to limit residential or commercial evictions, but only as to nonpayment evictions caused by a documented loss of income caused by the pandemic or the governmental responses. This is overly complicated and does not protect tenants from evictions now, but leaves it up to local jurisdictions to enact such protections. It is imperative that there is a statewide moratorium that does not rely on local action. Furthermore, tenants would have to prove such a loss in court, subjecting them to potential exposure to COVID-19, and many tenants who suffer a loss of income due to the pandemic or our public responses may be unable to document it. We believe a stronger and more straightforward approach would be to enact immediate statewide protections that postpone any eviction, regardless of the basis, to protect vulnerable tenants and the public, and avoid the need to pass local policies in all of California's cities and counties.

It is important to note that while the Executive Order solely grants additional authority related to nonpayment evictions, it does not prevent local governments from exercising their expansive authority to limit evictions on a much broader basis, including limiting evictions that are filed for reasons other than nonpayment of rent. Extending the limitation to all evictions would eliminate the necessity for tenants, landlords, and court staff to appear in person. Courts are high traffic areas, particularly the courtrooms where evictions are heard. To force even some tenants to continue going to court defeats the point of social distancing efforts and necessary quarantines. There are also fairness issues raised because these tenants may find it difficult to seek legal information or legal advice as many legal offices are shutting down in order to protect employees.

For all of these reasons, we call on the Governor to issue a blanket moratorium on all evictions as multiple states have done. In the absence of such action, we encourage local governments to enact policies to broadly protect tenants against all evictions.

3. Requesting Housing Authorities Postpone Document Deadlines

We are pleased to see the Governor acknowledge that now is not the time to require vulnerable tenants to obtain and deliver documentation to Housing Authorities in order to maintain their critically important housing assistance, and echo his request for policies to extend such deadlines. We recommend additional policies to postpone eligibility re-certifications and other in-person meetings, and for Housing Authorities to exercise their discretion to refrain from taking adverse decisions such as housing assistance terminations against participants, which could subject them to displacement and potential exposure while reducing their ability to protect themselves.

4. Engagement with Financial Institutions to Develop Tools to Prevent Foreclosure and Displacement

The Executive Order calls on state agencies to work with financial institutions to develop tools to combat foreclosure and displacement, and to otherwise promote housing stability

and security. We applaud the Governor's call to state agencies to develop strategies to address housing instability and ease the financial issues which could lead to foreclosure and displacement. The impacts of this virus and our responses to it will be felt by many Californians for some time, and it is important we develop these strategies while also taking the immediate action necessary to protect residents who are at immediate risk.

5. Requested Moratorium on Foreclosures Based on Documented Losses due to COVID-19

Per the Executive Order, financial lenders who hold home or commercial mortgages are being asked to halt foreclosures and evictions related to foreclosures where they would stem from a loss of income due to the pandemic or the governmental response. This is critical to ensure vulnerable homeowners, like vulnerable tenants, are not displaced and put at additional risk during this emergency. However, like the limitations on evictions discussed in part 2, these protections are limited to situations where the foreclosure is based on a documented loss of income or medical expense related to the COVID-19 pandemic. Because of the difficulty of proving this causal connection in many instances, and because it would likely require the involvement of a court, and hence a visit to a courthouse, to prove such a connection, this protection lacks the full potential to protect our communities that a more straightforward moratorium would provide.

6. Requested Monitoring and Reporting on Utility Shutoffs by CPUC

This part of the Governor's Order seeks the assistance of the Public Utilities Commission, the body tasked with oversight of essential industries such as water and gas, in monitoring customer protections. The Governor's request does not actually require the PUC to take action to ensure that people's utilities are maintained during this public health crisis, but simply requires it to monitor and report. Maintaining good hygiene and nutrition becomes much more difficult if water, power, or gas is shut off, and medically vulnerable residents are put at severe risk. At a time when we have all been advised that one of the most effective preventions for COVID-19 is frequent handwashing, we recommend requiring actions to be taken to limit the shutoff of vital utilities for the duration of the emergency.

The moratorium on utility shutoffs also does not protect against phone shutoffs for the poorest consumers who rely on the Lifeline Program. The program is vital because many homeless individuals rely on their phone to get information and stay in touch with others. Unfortunately, the PUC doesn't consider the lapse in certification to represent a cutoff. We call on the Governor to use his executive powers to prevent loss of phone connectivity for Lifeline Program customers during the emergency, when access to a phone is needed more than ever.