

Judicial Council Enacts COVID-19 Emergency Rules Preventing Unlawful Detainers and Staying Judicial Foreclosure Actions Statewide

On Monday, April 6, 2020, in an Emergency Meeting to address issues arising from the COVID-19 Crisis, the Judicial Council enacted [emergency rules](#) that protect tenants and borrowers by temporarily preventing California courts from processing unlawful detainer and judicial foreclosure actions, with limited exceptions. The emergency rules apply to both residential and commercial tenants and borrowers, and govern all California State Courts. These emergency rules became effective immediately. The Judicial Council enacted eleven emergency rules; this alert summarizes the two emergency rules that are of utmost importance to the real estate business.

Emergency Rule 1 (“ER1”) prohibits state courts from issuing a summons on an unlawful detainer (“UD”) complaint unless the court finds that “the action is necessary to protect public health and safety.” ER1, subs. (b). ER1 also prohibits state courts from entering default or a default judgment for restitution in UD actions for a defendant’s failure to appear, unless the court finds the action is necessary to protect public health and safety and the defendant has not appeared within the time provided by law, as extended by any applicable executive order. ER1, subs. (c). Finally, ER1 provides that once a defendant has appeared in the UD action, the court may not set trial for a date earlier than 60 days after a request for trial is made, unless the court finds that an earlier trial date is necessary to protect public health and safety.

Emergency Rule 2 (“ER2”) stays all judicial foreclosure actions – commercial or residential – and prohibits state courts from taking any action or issuing any decisions or judgments, unless the court finds that action is required to further the public health and safety. ER2, subs. (1). ER2 also tolls applicable statutes of limitation, ER2, subs. 2, and extends all deadlines for electing or exercising any rights under Code of Civil Procedure §§ 725a, *et seq.*, including exercising any right of redemption from a foreclosure sale or petitioning the court in relation to such a right. ER2, subs. (3).

These rules will remain in effect until 90 days after Governor Newsom declares that the state of emergency related to the COVID-19 pandemic is lifted, or until the Judicial Council amends or repeals the rules.

Many counties and municipalities have enacted emergency ordinances to prevent evictions attributable to loss of income caused by shelter-in-place orders. ER1 and ER2 effectively block access to the courts for most landlords and lenders for at least the next 120 days, absent further action by the Judicial Council. While these measures provide clarity for all stakeholders, it is not at all clear how the courts will process and adjudicate the deluge of UD actions that will almost certainly be filed once ER1 is lifted.

The effect of ER2 will likely be less substantial, given that the vast majority of foreclosures in California are non-judicial. It appears that during the COVID-19 crisis notices of default have continued to be recorded in those jurisdictions that allow for e-filing. Although a non-judicial foreclosure sale could arguably occur within the "Essential Businesses" exception for the finance industry, review of an online trustee sale posting service indicates that many, perhaps all trustee sales noticed to occur after the governor's emergency declaration have been postponed. This suggests that a flood of non-judicial foreclosures will proceed once the emergency declaration is lifted, unless the legislature intervenes.

While removal of the threat of eviction and foreclosure during this crisis may well support the public health effort to "flatten the curve," the Judicial Council has led the courts, the bar, and residential and commercial property owners and renters into uncharted territory. How the courts will deal with the backlog caused by these Emergency Orders, especially considering the clerical resources that summary, expedient UD actions require, is a question that, like so many questions in these fluid times, remains open.

If we can be of assistance and to discuss various options and specific situations, please feel free to contact any Buchalter attorney.

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