# Frequently Asked Questions: SB 91 - Extension of COVID-19 Tenant Relief Act

On January 29, 2021, Governor Gavin Newsom signed into law SB 91. It took effect immediately. This new law sets the rules for use of the funds allocated to California under the $25 billion emergency rental assistance funding created by the federal Consolidated Appropriations Act, 2021 (Public Law 116-260), the federal stimulus bill passed by Congress on December 27, 2020. SB 91 also extends the state's COVID-19 Tenant Relief Act (CTRA), originally enacted by the Legislature and signed by the Governor on August 31, 2020. It extends the law through June 30, 2021, and enacts new protections for renters related to the COVID-19 pandemic.

This Industry Insight answers the frequently asked questions about how SB 91 changes CTRA. For information about the new state rental assistance program, visit caanet.org/RAPP.

## TABLE OF CONTENTS


**I. Legislative Process ..... 3**

1. I saw there were two bills, SB 91 and AB 80, considered by the California Legislature. Why were there two bills and what was the difference between them? ..... 3
2. I see that SB 91 was introduced by the Committee on Budget. Why was it part of the budget? ..... 3

**II. Informational Notice ..... 3**

1. Do I have to notify my residents about the changes to CTRA made by SB 91? ..... 3
2. Should the informational notice be sent to all residents or just those with outstanding rental payments as of February 1, 2021? (New) ..... 3
3. Should I send the informational notice to a tenant who owes COVID-19 rent debt as of February 1, 2021, but has been keeping up with a payment plan? (New) ..... 3
4. If a resident has been current on rent since March 1, 2020, but was unable to pay rent March 1, 2021, does the informational notice have to be sent, or can I just serve a 15-Day Notice for March 2021, rent? (New) ..... 3
5. Where can I find translations of the informational notice? (New) ..... 4

**III. Extension of Eviction Protections ..... 4**

1. How does SB 91 change the COVID-19 Tenant Relief Act (CTRA)? ..... 4
2. Does SB 91 extend the January 31, 2021, deadline for residents to make the 25% rental payment required by CTRA? ..... 4
3. Does SB 91 continue the expansion of AB 1482's just-cause requirements? ..... 4
4. Can I still evict residents that do not submit a declaration of COVID-19 financial distress after being served with a 15-day notice? ..... 4



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5. Does SB 91 change how the eviction process works? .... 4

**IV. Other Resident Protections .... 5**

1. Can I charge late fees? .... 5
2. Is the prohibition on late fees for COVID-19 rental debt retroactive? (New) .... 5
3. Does SB 91 affect my ability to increase the rent? .... 5
4. My resident made a rent payment but owes a large past-due balance. How do I apply the payment? .... 5
5. Can I deny an application to rent if the applicant's prior landlord informs me that the applicant failed to pay rent due between March 1, 2020, and June 30, 2021? .... 6
6. Can I sell unpaid rental debt to a collection agency? .... 6
7. Can I apply the security deposit to unpaid rent if the resident is still living in the unit? .... 6

**V. Assignment of Debt .... 6**

1. Does the prohibition on assigning debt prevent us from sending former resident accounts to our third-party collection agency after June 30, 2021? (New) .... 6

**VI. COVID-19 Rental Debt Recovery in Small Claims Court .... 6**

1. I remember that CTRA temporarily expanded small claims court jurisdiction to allow a landlord to bring any case seeking unpaid COVID-19 rental debt in small claims court. Does SB 91 change this? .... 6
2. Does SB 91 change the type of information I must provide when filing a small claims case that seeks recovery of COVID-19 rental debt? .... 7

**VII. COVID-19 Rental Debt Recovery in Regular Civil Court (Not Small Claims) .... 7**

1. Can I file a breach of contract lawsuit in regular civil court (not small claims court) to recover COVID-19 rental debt? .... 7
2. What if I already filed a breach of contract action to recover COVID-19 rental debt? .... 8
3. Does SB 91 limit the recovery of attorney's fees in a breach of contract action for COVID-19 rental debt? 8

**VIII. Interaction with Other Laws .... 8**

1. Are local governments allowed to re-instate local moratoria on evictions for non-payment of rent that conflict with CTRA? .... 8
2. I had to close the gym at my property due to a local public health order. Now my resident has filed an application with the local rent board to reduce their rent based on a reduction in service. Does SB 91 address this issue? .... 8
3. I heard President Biden extended the federal eviction moratorium to March 31, 2021. How does that affect SB 91? .... 9

**IX. Prohibition on Use of Information About COVID-19 Rental Debt When Screening Applicants for Tenancy .... 9**

1. Can the landlord ask if the resident vacated owing rent during the COVID-19 period, but simply not use that information to deny tenancy? (New) .... 9
2. Does the prohibition on using unpaid rent due between March 1, 2020, to June 30, 2021, as a negative factor in the screening process apply to ANY rent or other money owed during the period or does it only apply to those tenants who provided a declarationof COVID-19 related financial distress? (New) .... 9



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## I. Legislative Process

**1. I saw there were two bills, SB 91 and AB 80, considered by the California Legislature. Why were there two bills and what was the difference between them?**

SB 91 and AB 80 were "companion bills." This means the content of each bill was identical, with one introduced in the Assembly (AB 80) and one introduced in the Senate (SB 91). Having companion bills allowed the proposal to be considered by both chambers of the Legislature at the same time. Only one of these bills – SB 91 – was signed into law.

**2. I see that SB 91 was introduced by the Committee on Budget. Why was it part of the budget?**

SB 91 was a "trailer bill." Trailer bills make statutory changes needed to implement the budget. They are the same as any other bill but take effect immediately with a majority vote. SB 91 was related to the budget because it included provisions to implement a new rental assistance program. See caanet.org/RAPP for information about the rental assistance program.

## II. Informational Notice

**1. Do I have to notify my residents about the changes to CTRA made by SB 91?**

Yes. Landlords are required to send a notice about the changes in the law to all residents who owe one or more rental payments due between March 1, 2020, and February 1, 2021. This includes residents who owe rent for this time period and (a) have not yet received a notice to pay rent or quit, (b) have received a 15-day Notice, but did not return the declaration, and/or (c) have received a 15-day notice and DID return the declaration. **The notice must be sent out by February 28, 2021**. The content of the notice is specified in the law. CAA's Informational Notice of COVID-19 Tenant Relief Act Extension And New Rental Assistance Program (Form CA-405) can be used to comply with this requirement. No new 15-day notices can be served until the landlord has complied with this requirement. Make sure to review the instructions prior to completing the form.

**2. Should the informational notice be sent to all residents or just those with outstanding rental payments as of February 1, 2021? (New)**

The informational notice should **only** be sent to residents who have outstanding rental payments as of February 1, 2021. Specifically, the law says the notice must be provided to residents " who as of February 1, 2021 have not paid one or more rental payments that came due during the covered time period." The covered time period is March 1, 2020 to June 30, 2021. Rental payments include past due rent, utilities, parking fees, and another other charges under the rental agreement Sending the notice to residents who are current simply provides them with information about how to legally stop paying rent.

**3. Should I send the informational notice to a tenant who owes COVID-19 rent debt as of February 1, 2021, but has been keeping up with a payment plan? (New)**

Yes. If the resident still owes rental payments that came due on or after March 1, 2020, the informational notice should still be provided to the resident, even if the resident is up to date with payments under a payment plan.

**4. If a resident has been current on rent since March 1, 2020, but was unable to pay rent March 1, 2021, does the informational notice have to be sent, or can I just serve a 15-Day Notice for March 2021, rent? (New)**

The informational notice is only required to be sent to those residents who have unpaid rental payments as of February 1, 2021. There is no harm in serving the informational notice with, or prior to a 15-Day Notice for the March 2021 rent for a resident that was previously current, but it is not required. The informational notice includes information about the extension of the deadline to pay 25% of the rent under CTRA and about the rental assistance program. This information also appears in the 15-Day Notice.


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5. **Where can I find translations of the informational notice? (New)**

As required by CTRA, the Department of Real Estate has official translations of the informational notice on their website, which can be found at https://landlordtenant.dre.ca.gov/landlord/forms.html. CAA recommends that if you are required by California law to provide the rental agreement in a foreign language, that you also provide the informational notice in that language.

## III. <u>Extension of Eviction Protections</u>

1. **How does SB 91 change the COVID-19 Tenant Relief Act (CTRA)?**

SB 91 extends CTRA's protections to rental debt due through June 30, 2021. CTRA's protections previously applied only to rental debt due through January 31, 2021.

2. **Does SB 91 extend the January 31, 2021, deadline for residents to make the 25% rental payment required by CTRA?**

Yes. The deadline for residents who are protected by CTRA (because they provided a declaration of COVID-19 financial distress to the landlord in response to one or more 15-day notices) to pay 25% of the unpaid rental payments has been extended to June 30, 2021. The 25% requirement now applies to rental payments due between September 1, 2020, and June 30, 2021, that the resident is unable to pay because they have experienced COVID-19 financial distress (as shown by the resident submitting a declaration of COVID-19 financial distress to the landlord in response to one or more 15-day notices).

3. **Does SB 91 continue the expansion of AB 1482's just-cause requirements?**

Yes. SB 91 extends until July 1, 2021, CTRA's expansion of AB 1482 just cause. CTRA had temporarily expanded just cause to: (a) all properties, even those previously exempt from AB 1482 such as single-family homes and new construction, and (b) all residents of covered properties from the first day of tenancy. This means that tenancies cannot be terminated (including requiring a resident to vacate at the end of a fixed term lease) unless the landlord's notice is based on and states one of the "just causes" specified in AB 1482.

4. **Can I still evict residents that do not submit a declaration of COVID-19 financial distress after being served with a 15-day notice?**

Yes. CTRA's protections continue to apply only to residents who submit a declaration of COVID-19 financial distress (and documentation, if required for a high-income resident) to the landlord in response to a 15-day notice. If a resident ignores a 15-day notice, the landlord can file an unlawful detainer action (unless prohibited from doing so by a local government's moratorium that was enacted prior to August 19, 2020). In addition to state and local protections, the Federal Centers for Disease Control (CDC) eviction moratorium order is in effect through at least March 31, 2021. This order may affect a landlord's ability to evict a resident, even if that resident did not comply with CTRA and/or an applicable local government eviction moratorium. See CAA's Industry Insight – CDC Eviction Moratorium for more information.

In response to an eviction case, a resident who failed to return the declaration of COVID-19 financial distress to the landlord can file the declaration with the court within the time period provided in the law (typically, 5 business days). The court will hold a hearing, and if the judge finds that the resident's failure to return the declaration was the result of "mistake, inadvertence, surprise, or excusable neglect" then the resident will still be protected by CTRA.

5. **Does SB 91 change how the eviction process works?**

SB 91 makes some minor changes to the eviction process but leaves the existing process largely intact. The two changes made are:

- Before the court can enter judgment for the landlord, it must verify with the landlord all of the following:

- The landlord has not received rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint.
- The landlord has not received rental assistance or other financial compensation from any other source for rent accruing after the date of the notice underlying the complaint.
- The landlord does not have any pending application for rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint.
- The landlord does not have any pending application for rental assistance or other financial compensation from any other sources for rent accruing after the date of the notice underlying the complaint.

- The amount of attorney's fees that can be awarded to a prevailing party in a case based on non-payment of COVID-19 rental debt (amounts due between March 2020 and June 2021) *may* be limited to $500 in uncontested cases and $1,000 in contested cases.

The provision of the law that creates this rule applies to "in any action to recover COVID-19 rental debt." While unlawful detainers are not expressly covered by this section of law, an unlawful detainer action in which the landlord requests rental damages as part of the judgment would likely be subject to this limitation on attorney's fees. Many courts have local rules that already limit recovery of attorney's fees in unlawful detainer actions.

The law allows the court to make an award that exceeds these limits if the case was not litigated under "ordinary" circumstances. For example, if there was a substantial amount of discovery performed or if there were complex pre- or post-trial motions.

## IV. <u>Other Resident Protections</u>

### 1. Can I charge late fees?

SB 91 prohibits a landlord from charging or attempting to collect late fees from a resident who has submitted a declaration of COVID-19-related financial distress.

### 2. Is the prohibition on late fees for COVID-19 rental debt retroactive? (New)

While the provision is not technically retroactive it prohibits the landlord from charging or collecting late fees for COVID-19 rental debt going forward. This means that the prohibition has two parts: (1) a landlord cannot charge late fees going forward (from January 29, 2021, the effective date of SB 91), and (2) the landlord cannot take action on or after January 29, 2021 to collect late fees that were assessed in the past. If valid late fees were already paid prior to January 29, 2021 they do not have to be refunded. These prohibitions apply only with respect to a resident who has submitted a declaration of COVID-19-related financial distress.

### 3. Does SB 91 affect my ability to increase the rent?

No. However, SB 91 prohibits a landlord from increasing fees or charging new fees for services previously provided by the landlord without charge for a resident who has submitted a declaration of COVID-19-related financial distress.

### 4. My resident made a rent payment but owes a large past-due balance. How do I apply the payment?

SB 91 prohibits a landlord from applying a monthly rental payment to any COVID-19 rental debt (amounts due between March 2020 and June 2021) other than the prospective month's rent unless the resident has agreed in writing to allow the payment to be so applied. This means that if the resident makes a payment by check and does not specify in writing how it is to be applied, it must be applied to the "prospective" month's rent. While the bill does not define "prospective," the ordinary definition of "prospective" refers to future, which would mean a payment in one month would be applied to the next month's rent.


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5. **Can I deny an application to rent if the applicant's prior landlord informs me that the applicant failed to pay rent due between March 1, 2020, and June 30, 2021?**

No. SB 91 prohibits a landlord, resident screening company, or other entity that evaluates applicants on behalf of a housing provider from using an alleged COVID-19 rental debt (amounts due between March 2020 and June 2021) as a negative factor for the purpose of evaluating a prospective housing application or as the basis for refusing to rent a dwelling unit to an otherwise qualified prospective resident. This requirement applies even if the resident's reason for not paying the rent was not due to COVID-19 financial distress.

6. **Can I sell unpaid rental debt to a collection agency?**

SB 91 prohibits the sale or assignment of all COVID-19 rental debt (amounts due between March 2020 and June 2021) until July 1, 2021. After July 1, 2021, this prohibition is partially lifted. The ban on sale or assignment is permanent with respect to residents who meet the eligibility criteria for the federal rental assistance program but is lifted with respect to all other residents. See caanet.org/RAPP for more information about the rental assistance program.

7. **Can I apply the security deposit to unpaid rent if the resident is still living in the unit?**

No, unless the resident consents in writing. SB 91 prohibits a landlord from applying a security deposit to satisfy COVID-19 rental debt (amounts due between March 2020 and June 2021), unless the resident has agreed in writing to allow the deposit to be so applied. The landlord can use the security deposit to satisfy COVID-19 rental debt after the tenancy ends, in accordance with the existing security deposit law. See CAA's Industry Insight – Security Deposits: Collection and Return for more information about security deposits.

## V. Assignment of Debt

1. **Does the prohibition on assigning debt prevent us from sending former resident accounts to our third-party collection agency after June 30, 2021? (New)**

SB 91's prohibitions on assigning debt apply irrespective of whether the resident still lives at the property. SB 91 prohibits the sale or assignment of any COVID-19 Rental Debt prior to July 1, 2021. It prohibits the sale or assignment of COVID-19 Rental Debt in perpetuity if the household owing the rent would have qualified for the rental assistance program and was at or below 80 of the area median income for the 2020 calendar year. This means that if such as household left owing money and the landlord never had the opportunity to apply for funds, the landlord would be prohibited from assigning debt to a third party.

## VI. COVID-19 Rental Debt Recovery in Small Claims Court

1. **I remember that CTRA temporarily expanded small claims court jurisdiction to allow a landlord to bring any case seeking unpaid COVID-19 rental debt in small claims court. Does SB 91 change this?**

Yes, but a bit of background is needed to explain those differences.

Prior to CTRA, state law prohibited cases from being brought in small claims court that sought payment of money amounting to more than $5,000, with the exception that a natural person (i.e., not an entity like an LLC or corporation) could bring a case for up to $10,000. Cases that exceeded these limits had to be brought in regular civil court actions. Additionally, a person was prohibited from bringing more than two small claims cases that sought more than $2,500 in a year.

CTRA dramatically changed these provisions. CTRA allowed the small claims court to have jurisdiction until February 1, 2025, for any case seeking unpaid rental payments due between March 1, 2020, and January 31, 2021 – even if the amount sought is more than the $5,000/$10,000 limit discussed above AND even if the landlord has already brought two cases seeking more than $2,500 in the past year. However, under CTRA

these cases could not be filed before March 1, 2021. This March date has been moved to a later time by the new law. See below.

SB 91 changes CTRA's expansion of small claims court jurisdiction in two ways.

- First, it prohibits a landlord from bringing these actions in small claims court until August 1, 2021 (i.e., they extend the March 1, 2021, date to August 1, 2021)
- Second, it extends the time period the small claims court has jurisdiction in the cases described above from February 1, 2025, to July 1, 2025. Note that this does not extend the statute of limitations (the time period) to bring such a case – it merely extends the time frame in which a case for which the statute of limitations has not run can be brought as a small claims case, as opposed to a regular civil case. For example, the California statute of limitations for a breach of contract case is two years for oral contracts, four years for written contracts, and three years for personal property damage cases. Being able to bring cases for unpaid rental payments in small claims court can benefit landlords because it is much cheaper to bring a case in small claims court, the procedures in small claims court are much simpler than regular civil court, and small claims cases are generally processed much faster than regular civil court. Therefore, allowing these cases to be heard in small claims court is very helpful to landlords.

**2. Does SB 91 change the type of information I must provide when filing a small claims case that seeks recovery of COVID-19 rental debt?**

Yes. SB 91 requires that when filing a small claims case that seeks recovery of COVID-19 rental debt, a plaintiff (i.e., the landlord) attach documentation to the claim that establishes they did all the following:

- Made a good faith effort to investigate whether governmental rental assistance is available to the resident;
- Sought governmental rental assistance for the resident; and
- Cooperated with the resident's efforts to obtain rental assistance from any governmental entity or third party.

In addition to the above, the court may reduce the damages awarded if the court determines that the landlord refused to obtain rental assistance from, and the resident met the eligibility requirements for, the State Rental Assistance Program and funding was available. In other words, the landlord cannot refuse to participate in the State Rental Assistance Program and then sue the resident for the money they would have been able to obtain from the program.

## VII. COVID-19 Rental Debt Recovery in Regular Civil Court (Not Small Claims)

**1. Can I file a breach of contract lawsuit in regular civil court (not small claims court) to recover COVID-19 rental debt?**

New breach of contract actions cannot be filed in regular civil court until July 1, 2021. Regular civil court is a different venue and has more complicated procedures than small claims court. On or after July 1, 2021, in order to file a breach of contract complaint for a COVID-19 rental debt, a plaintiff (i.e., the landlord) must attach documentation to the lawsuit that establishes that they did all the following:

- Made a good faith effort to investigate whether governmental rental assistance is available to the resident;
- Sought governmental rental assistance for the resident; and
- Cooperated with the resident's efforts to obtain rental assistance from any governmental entity or third party.

In addition to the above, the court may reduce the damages awarded if the court determines that the landlord refused to obtain rental assistance from, and the resident met the eligibility requirements of, the State Rental

Assistance Program and funding was available. In other words, the landlord cannot refuse to participate in the State Rental Assistance Program and then sue the resident for the money they would have been able to obtain from the program.

These requirements do not apply to a breach of contract action to recover COVID-19 rental debt that was pending before the court prior to the date SB 91 become law.

**2. What if I already filed a breach of contract action to recover COVID-19 rental debt?**

If your case was filed before October 1, 2020, it will be allowed to proceed unless the action is filed against a person who would have qualified for rental assistance under the Federal Rental Assistance Program AND had a household income at or below 80% of the area median income for the 2020 calendar year. It is not yet known how the courts will determine which cases fall within this exception, and thus will be allowed to continue. All other pending cases will be stayed until July 1, 2021.

**3. Does SB 91 limit the recovery of attorney's fees in a breach of contract action for COVID-19 rental debt?**

Yes, but only under "ordinary circumstances." Under ordinary circumstances, SB 91 limits the amount of reasonable attorney's fees to $500 in uncontested matters and to $1,000 in contested matters. In determining whether a case was litigated under ordinary circumstances, the court may consider the following:

- The number and complexity of pretrial and posttrial motions.
- The nature and extent of any discovery performed.
- Whether the case was tried by jury or by the court.
- The length of the trial.
- Any other factor the court finds relevant, in its discretion, including whether the landlord or resident would be eligible for rental assistance under the State Rental Assistance Program.

A case that the judge decides was not "ordinary" based on the above criteria would not be subject to the attorney's fees limitations described above.

## VIII. Interaction with Other Laws

**1. Are local governments allowed to re-instate local moratoria on evictions for non-payment of rent that conflict with CTRA?**

No. SB 91 extends through June 30, 2021, the provisions of CTRA that limited the ability of local governments to enact or extend moratoria on non-payment of rent. Local eviction moratoria that were in effect before August 19, 2020, can stay in effect but cannot be extended. Local governments can still enact or extend eviction moratoria unrelated to non-payment of rent. This means that local governments cannot expand protections for residents based on non-payment of rent, but they can place new limits on other grounds for eviction. For example, some local governments have limited the ability terminate a tenancy based on a violation of the rental/lease agreement where the resident allowed a family member to move in and the reason for doing so was related to COVID-19.

**2. I had to close the gym at my property due to a local public health order. Now my resident has filed an application with the local rent board to reduce their rent based on a reduction in service. Does SB 91 address this issue?**

Yes. SB 91 provides that a landlord who temporarily reduces or makes unavailable a service or amenity as the result of compliance with federal, state, or local public health orders or guidelines is not considered to have violated the rental/lease agreement or to have provided different terms or conditions of tenancy or reduced services for purposes of a local rent control law.


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**3. I heard President Biden extended the federal eviction moratorium to March 31, 2021. How does that affect SB 91?**

SB 91 has no effect on the extension of the Federal Centers for Disease Control (CDC) eviction moratorium order through at least March 31, 2021. The CDC order may affect a landlord's ability to evict a resident, even if that resident did not comply with CTRA and/or an applicable local eviction moratorium. See CAA's Industry Insight – CDC Eviction Moratorium for more information.

## IX. Prohibition on Use of Information About COVID-19 Rental Debt When Screening Applicants for Tenancy

**1. Can the landlord ask if the resident vacated owing rent during the COVID-19 period, but simply not use that information to deny tenancy? (New)**

While the law prohibits use of an alleged COVID-19 rental debt as a negative factor in screening, CAA recommends that you do not ask about COVID-19 rental debt. This recommendation is provided for two reasons: (1) once one has negative information about an applicant, it is difficult to disregard, and (2) if the question is asked and answered, and the applicant is denied, the landlord would have a hard time proving that it was not a factor in the denial. CAA's Rental Applicant Reference (Form CA-014) has been revised in accordance with this law. CAA recommends that when this form is used to provide a reference that any information about non-payment of rent or other financial obligations of the tenancy between March 1, 2020 and June 30, 2021 be omitted.

**2. Does the prohibition on using unpaid rent due between March 1, 2020, to June 30, 2021, as a negative factor in the screening process apply to ANY rent or other money owed during the period or does it only apply to those tenants who provided a declaration of COVID-19 related financial distress? (New)**

The prohibition on use of this information in applicant screening applies irrespective of the reason for non-payment and irrespective of whether a declaration of COVID-19 related financial distress was provided.


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