

DEALING WITH COVID RENT DEBT

**Kari Rudd,
Senior
Attorney,
Bay Area
Legal Aid**

(Updated 2/5/21)



BAY AREA LEGAL AID

Free legal assistance for low-income people in seven Bay Area counties.

- **Legal Advice Line: 1-800-551-5554**
- **Health Consumer Center: 1-855-693-7285**

THE LAW RIGHT NOW

NOTE: this information was updated 2/5/21 (after presentation recorded)

- Eviction protections (more info at <https://wclp.org/covid-19-coronavirus-information-response-and-considerations/ylegal.org>)
- Declaration of COVID-related financial distress, each time landlord serves a notice
- Rent debt accrues
 - Debt cannot be assigned/sold before July 1, 2021
 - Collection actions stopped until July 1, 2021 or August 1, 2021 (small claims)
 - No late fees
 - No attorney's fees until July 2025
- Credit reporting
 - Cases are 'masked' but can still appear as debts on reports.
 - No housing denials allowed for COVID-19 rental debt

DEBT COLLECTION

RENT DEBT

The LA Times reports:

“Nearly a quarter of a million tenant households in California will be behind on their rent payments by the end of the year, according to an estimate by the Federal Reserve Bank of Philadelphia. The average household in arrears will owe nearly \$7,000, with a total of \$1.7 billion owed to landlords, the study said.

A U.S. Census Bureau survey found that, as of last month, 14% of tenant families in California reported being behind on their rent payments.”

(McGreevy, With eviction protections ending, California lawmakers propose an extension to help tenants, Los Angeles Times, Dec 8, 2020.)

DEBT COLLECTION METHODS



PHONE CALLS



LETTERS



**CREDIT
REPORTING**



LAWSUITS

WHO ARE THE DEBT COLLECTORS?



**CREDITORS
COLLECTING FOR
THEMSELVES**



**PROFESSIONAL
DEBT COLLECTORS**



LAWYERS



DEBT BUYERS

DEBT COLLECTOR HARASSMENT

- Calling too early, too late, at work when debtor says not to, repeatedly to harass
- Talking about debt to others
- Trying to collect amounts not owed
- Threats to take unlawful action (or attempts to do so)
- Misleading debtors
- Violating “cease and desist” letter

FAIR DEBT COLLECTION LAWS

- Federal FDCPA applies to “third party” debt collectors
 - Landlord attorneys
 - Collection companies
 - Debt buyers
- State Rosenthal Act applies to original creditors but *not* rent debt
- 1 year Statute of Limitations (deadline) to enforce

DEBT COLLECTION LAWSUITS



- Plaintiff must prove:
 - Defendant owes the debt
 - Plaintiff is the owner of the debt
 - They didn't miss their deadline (Statute of Limitations)—4 years from breach or last payment)
 - **Updated 2/5/21**: for COVID-19 rental debt, landlord must demonstrate good faith effort to seek financial assistance.

TYPES OF LAWSUITS

Small claims

- Faster, less formal
- No lawyers
- Defendant brings arguments and evidence to trial
- No right to get Plaintiff's evidence/witness list in advance
- Right to appeal and present evidence to a new judge

Limited Civil

- Plaintiff will usually have a lawyer
- Defendant must file a response (usually an Answer) within 30 days of service
- Must raise all defenses in Answer or risk waiving them
- More limited scope of appeal

COLLECTION JUDGMENT

- **Lasts 10 years and can be renewed**
- **Methods of collection:**
 - **Wage garnishment**
 - **Bank Levy**
 - **Lien on real property**

PROTECTED FROM COLLECTION

- Government benefits
 - Direct deposit=automatic protection for federal benefits
- Retirement accounts (may also be exempt after payment)
- Minimum wage income
- \$1,788 cushion in bank account
- Other money, with financial statement showing debtor needs it to support themselves/their family

CLAIM OF EXEMPTION

- **Deadline:**
 - 10-days from notice of bank levy
 - Any time for ongoing wage garnishment
- **Submit to Sherriff (not necessarily your local sheriff, check the notice)**
- **If plaintiff objects, there will be a court hearing**

SETTLING DEBTS: FACTORS TO CONSIDER

- Who is collecting?
- How old is the debt
- Are you collection-proof?
- Are you considering bankruptcy?
- Lump sum or payment plan?

SCAM WARNING

- Many companies offer debt settlement/debt consolidation services promising to settle all of a consumer's debts for a flat fee.
- These companies often collect exorbitant fees for themselves while settling some but not all of the debts (usually the easiest, i.e. debts that are past the statute of limitations).
- Consumers frequently end up in worse situation than they started.

CREDIT REPORTING

CREDIT REPORTING AGENCIES

- **Big 3: Experian, Equifax, TransUnion**
- **Specialty CRAS:**
 - **Tenant screening**
 - **Employment screening**

EVICTIION RECORDS

- **“Masked” Unlawful Detainer cases are sealed from the general public (information available only in limited circumstances).**
- **“Unmasked” records often appear in tenant screening reports, and anyone can look up the case by searching the tenant’s name in the court’s online database.**
- **Tenants are blacklisted from future housing based on old UD’s.**

COLLECTION RECORDS

- State law extends “masking” protections to small claims collection cases on COVID rent debt, to keep these out of the public record
- Landlords and debt collectors can still report delinquent debts on credit reports
- **Updated 2/5/21:** housing providers and tenant screening agencies that make admissions recommendations cannot use COVID-19 rental debt as a negative factor or reason for denial

GETTING YOUR CREDIT REPORT



Big 3 reports available online
at:
www.annualcreditreport.com



Right to copy of report after a
denial (name & address of
CRA in the notice)

CONSUMER RIGHTS

- Accurate information
- Up-to-date information
- Most negative entries disappear after 7 years
- No arrests without conviction (CA only)

DISPUTING ERRORS

- **Best practice:**
 - In writing
 - Certified mail with return receipt
- **Include identifying information and verification docs**
- **Explain why it is inaccurate or misleading (with supporting documents, if any)**

VERIFICATION

- CRAs can set “reasonable requirements” to verify identity and address.
- Online: Name, SSN, DOB, current and recent mailing address, security (trick) questions
- Mail: Photo ID (Name and DOB), SSN
 - If address is not on ID, send utility bill, letter from County or SSA, or shelter letter
- It can be frustrating- keep trying and talk to an attorney

HELP AND RESOURCES

- **Consumer Rights Clinic: Thursdays by phone (during pandemic)**
 - Call our Legal Advice Line to make an appointment: 1-800-551-5554 (Mon-Thurs, limited hours)
 - More info at: www.baylegal.org
- **Other Resources for Tenants Rights Information:**
 - www.housingnowca.org
 - <https://wclp.org/>