



CRE & Rent Reconciliation  
Silicon Valley Economic Development Alliance  
June 2, 2021  
Nancy Park



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# What Are Eviction Moratoriums?

- Temporarily prohibit a landlord's ability to evict tenants for failure to pay rent due to COVID-19 hardships
- Generally, tenants must qualify with certain criteria
- NOT a safe harbor for other lease defaults by tenants



# Landlord and Tenant Rights Under Moratoriums

- City of San Francisco
  - Criteria: tenant registered in SF, <\$25 M gross receipts, & missed a rent pmt. during 3/16/20-6/30/21
  - Landlord can't evict before written notice and opportunity to cure
  - Tenant can extend cure period one month at a time (up to 6 months after due date)



# Landlord and Tenant Rights Under Moratoriums

(continued)

- City of San Francisco
  - Does not apply to office space(exc. 501c3); smaller LLs may be able to evict tenants; some small tenants may be able to terminate lease (but still liable for rent)
  - Read the fine print!





# Moratoriums Overview

Moratorium	Ends	Permits/Controls
Federal – CDC Guidelines	June 30, 2021	<ul style="list-style-type: none"><li>Allows more restrictive state and local protections, but overrides anything less restrictive</li></ul>
State (CA) – Executive Order - N-28-20	June 30, 2021	<ul style="list-style-type: none"><li>Suspends state law preempting or restricting a local government's ability to limit evictions</li></ul>
Local – Ordinances	June 30, 2021	<ul style="list-style-type: none"><li>The stricter protections for tenants control between state or local protections</li></ul>



# Applicability of Moratoriums

- CDC Guidelines
  - Only apply to residential tenants
- CA Legislation (not Executive Orders)
  - AB-3088 (later extended by SB-91) only applies to residential tenants



# Best Practices for Landlords and Tenants Under Moratoriums (& After)

- Maintain communication with each other (calls, in person, email, text, mail)
- Be cooperative and flexible





# Best Practices for Landlords and Tenants Under Moratoriums (& After)

(continued)

- Tenants should provide backup for claims of hardship, including financial statements and sales figures when requested
- Be prepared to compromise
- Understand local restrictions/eviction moratorium and if city (or county) is more favorable



# LL and T Considerations for Working Things Out and Moving On

- Moratorium does not mean that rent is forgiven or not owed
- Payment plans should include a ramp up of sales/income (not all monies owed in short time after restrictions lifted)
- Parties need to be realistic about payback periods/amounts
- Landlords should communicate with lender, to ask for forbearance on loan payments (LL may need to provide backup and financial statements of LL and T)



# LL and T Considerations for Working Things Out and Moving On (continued)

- Landlords should seek available resources (tax deductions for unpaid rent, etc)
- Tenants should explore all resources:
  - Apply for SBA EIDL or PPP loans
  - Local assistance programs (city/county, chambers of commerce, or regional foundations)
- Bankruptcy worth considering, but very expensive & not always the right solution



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# Important Lease Provisions

Some landlords may require new lease terms (extend lease term/add personal guarantee, etc.) in exchange for rent payback



- Term- Look at remaining term left in the lease for payback
- Rent– Review and consider % of sales or ramp-up over time, as approp.
- Default- Review tenant's liability if payback terms not met (remainder of lease term, etc)
- Force Majeure- Look for exclusion for viruses and pandemics and if rent must be paid during force majeure (T still liable for rent)
- Personal Guarantee- what is at risk for tenant? What assets are available for payback?



# Questions?



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