

NOW IS THE TIME FOR LANDLORDS AND TENANTS TO DISCUSS AND AMEND LEASES TO ADDRESS RENT DUE DURING COVID-19

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As I sat at the new desk in my new office last week, which is the dining room table in my home, flanked by our daughter's art station on my left and our son's Lego table on the right, watching the Stock Market drop more than 2,000 points in one day and businesses closing their doors, I thought to myself, "Wait a minute! We just did this twelve years ago!" But, this is different. This is not 2008. This bear market and looming recession were not caused by the economic factors that lead to other recessions during the last century, and most recently the Great Recession. The current situation is the result of an external force: a worldwide pandemic of a novel virus, forcing people all over the globe to shelter in place and avoid social contact. This is unlike anything we in modern society have ever seen. While this is not 2008, there are certainly valuable lessons we learned from the Great Recession, and our ability to utilize what we learned from 2008 will have a significant impact on our recovery from this unexpected blow dealt to our economy by COVID-19. In short, landlords and tenants need to be proactive and modify their leases now to address rent payment issues they will face in the coming months.

First, let's start where things stand today. The State of California has issued an order requiring all individuals living in the State to stay home, except as needed to maintain continuity of operation of certain sectors that the federal government has identified as "critical infrastructure sectors". Many counties, including Sacramento and several in the Bay Area, have issued more stringent orders. The result is that many business are closing, or barely operating, and will not have the ability to fulfill their rental obligations under their leases this month and in months to come.

When the Great Recession hit, businesses were closing at historic rates because the economy imploded. People were losing jobs and the demand for goods and services came to a grinding

halt. When tenants were failing to pay rent and/or closing, the initial response from landlords was eviction and lawsuits. However, the time and cost challenges associated with pursuing failing or failed tenants, coupled with staggering vacancy rates, gave rise to concern among landlords about this approach. In response, many landlords began using rent relief as an alternative method to address tenant defaults. This became an effective way for the landlord and the tenant to structure terms of a lease modification that would keep the business open. Often, both sides had to share in some of the pain. But ultimately, this led to the survival of many businesses that might otherwise have failed.

What many landlords also discovered in 2008 is that “rent relief” does not need to be rent forgiveness. Rather, there are numerous ways to provide temporary rent relief to a tenant without giving up the right to collect that unpaid rent at a later date. Deferral of rent for a finite period of time, with the repayment of that rent to start at some date certain in the future, provides the tenant with the ability to get back on its feet, but also protects the landlord’s right to eventually realize the full benefit of the bargain it negotiated in its lease.

If 2008 taught us anything, now is the time to be proactive. Landlords should approach their tenants now, not two weeks from now, and discuss their ability to pay rent. This is especially true with tenants in the retail and service sectors, such as bars, restaurants, hair and nail salons, health and fitness and other business that have been forced to shut down by mandate of the State. Likewise, tenants who know they are going to have difficulty fulfilling their rental obligations should contact their landlords now, not two weeks from now, to have a discussion about what can be done. The most important step that needs to be taken in connection with these discussions is a written lease amendment which memorializes the agreement the parties reach so both parties can avoid any confusion and dispute in the future over the terms. We are here to help and will be pleased to answer any questions you have about structuring rent relief and can assist with the preparation of the necessary lease amendments.

Take care, stay safe and know that like all tough times, this too will pass.