



ECONOMIC  
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## **ADVISOR, TENANT AND LANDLORD GUIDANCE DURING COVID-19**

**This guide is intended to assist Advisors, Renters and Landlords navigate multiple options for dealing with current moratoriums in place.**

Note: Current moratoriums do not relieve the tenants from paying rent, but they do allow for a deferral and the rent will need to be paid in full in the future. No laws or acts have been passed that implement rent forgiveness. Additionally, it is important that each tenant reviews their lease agreement as it will define how they can negotiate, move forward and communicate with their landlord. The lease will help each side determine what their rights are. Both tenants and landlords need to be in communication with one another regarding the tenant's ability to pay rent.

### **CURRENT MORATORIUMS AND ORDERS**

#### **Residential**

On August 31, 2020, Governor Newsom signed the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (the "Act"), urgency legislation that immediately went into effect on September 1, 2020. This act protects residential tenants, homeowners and small landlords from being evicted due to nonpayment of rent before February 1, 2020. [For more information, review our EDC Legal Alert.](#)

#### **Commercial**

On September 23, 2020, Governor Newsom signed [Executive Order N-80-20](#). The Order extends the time frame for local governments to provide commercial eviction protections due to COVID-19 to March 31, 2020. The additional protection is not automatic, however. Commercial landlords and tenants will have to wait and see if local governments in Ventura County, Santa Barbara County or surrounding areas enact or extend the protections authorized by the Order.

### **IMMEDIATE RECOMMENDED ACTIONS**

#### **1. COMMUNICATE WITH YOUR LANDLORD OR TENANT**

- **TENANTS-** If you are a tenant and need to inform your landlord of missed or non-payment of rent, click here to access a "[Declaration of COVID-19 Related Financial Distress.](#)"
- **LANDLORDS-** If you are a landlord and need to inform your tenant of the intent to evict, understand your rights or need more resources, click [here](#).

#### **2. CONNECT WITH YOUR LOCAL JURISDICTION**

Connect with your local city to understand the ordinance that applies to your location and situation.

### 3. REVIEW LANDLORD/TENANT WEBINAR

Review "[Creative Solutions for Commercial Landlords and Tenants During COVID-19](#)" with the attorneys from Myers, Widders, Gibson, Jones & Feingold, LLP. along with a [PDF handout](#) highlighting suggestions for win-win solutions (see same strategies below).

### 4. SEEK LEGAL COUNSEL

- **RETAIN AN ATTORNEY**- We encourage businesses to consult and secure their own legal counsel. While that is an out of pocket expense, it is prudent and may help avoid higher costs down the line. Attorneys from Myers, Widders, Gibson, Jones & Feingold, LLP provided an excellent overview, available at the link above; they can be contacted by calling 805.644.7188, emailing [info@mwgjlw.com](mailto:info@mwgjlw.com) or visiting [www.mwgjlw.com](http://www.mwgjlw.com).

*NOTE: The EDC does not endorse a particular law firm or practice.*

- **NO-COST LEGAL**- Free legal assistance is available in [Santa Barbara](#) and [Ventura County](#) through legal aid self-help. These offices can assist you in "Unlawful Detainer" and provide resources to assist with landlord/tenant negotiations.

### 5. SEEK FINANCIAL AND DEBT COUNSELING

Seek advice from an EDC financial advisor to review your cash flow management, rent or mortgage deferral impacts, and specific financial concerns. To schedule your no cost advising appointment please call 805.409.9159 or visit [www.edcollaborative.com](http://www.edcollaborative.com).

## STRAGIES FOR WIN-WIN NEGOTIATIONS

### Suggestions for Potential Win-Win Solutions:

1. **Postpone or Restructure Rent**- landlord gives tenant a specific temporary period of free or reduced rent, then delayed rent is recovered in the future through increasing the term or increasing rent amount due later in the lease term
2. **Cash for Keys**- a lump sum to the landlord in exchange for the tenant surrendering the premises and terminating the lease early (both parties agree to release any and all claims against each other)
3. **Additional Cash Security**- an additional letter of credit, increased security deposit, surety bond, or personal/family member guarantees from the tenant
4. **Additional Collateral**- in the form of interest in available non-cash assets or a UCC-1 lien
5. **In-Kind Services in Lieu of Rent**- some tenants may be able to provide services in-lieu of rent
6. **Promissory Note for Rent**- secure a promissory note by resident or personal guarantee from another relative
7. **Obtain Interest in Tenant's Company**- offer stock or membership interest to the landlord in exchange for rent, with clear terms for sale back to the tenant in the future
8. **Reduce Leased Premises**- relocate the tenant to different premises or reduce the square footage of the existing premises
9. **Third Party Sources of Relief**- mortgage modification or forbearance, business interruption insurance, emergency disaster relief loans, or reduction of other expenses (such as utilities)

## GENERAL PRINCIPLES FOR CREATING WIN-WIN NEGOTIATIONS

1. **Landlords Should NOT Resort to “Taking Matters into Their Own Hands”**- Landlords may not enforce non-legal remedies, such as changing the locks, notifying security to restrict access, or removing tenant’s property from leased premises. Tenants are not trespassers and until eviction, are entitled to peaceful and quiet possession.
2. **Be Proactive**
  - Landlords:
    - Generally, a landlord’s failure to act on a tenant’s default is deemed a waiver of right to declare future defaults.
    - Failure of landlord to enforce their rights under the lease can send dangerous message to tenant that the landlord will be lenient.
  - Tenants:
    - Keep lines of communication open- silence is not a good option
    - Act early to try to prevent worsening of problems.
  - Both Parties: Goal is to mitigate damages
3. **Keep it Quiet**- If the parties reach an agreement, they should sign a confidentiality agreement. This prevents other tenants from finding out about any compromise that may not also apply to them, which then may strain the tenant-landlord agreement.
4. **Give and Take**- There are two sides to the negotiating process. If a landlord is willing to make concessions, the tenant should be willing to relinquish some of their rights under the lease.

## WHAT IF THE NEGOTIATING DOESN'T WORK AND THE TENANT TURNS IN THE KEYS AND WALKS AWAY?

- This is considered “abandonment” and is a breach of the lease agreement.
- If a tenant walks away, the landlord can claim damages based on Civil Code 1951.2 Controls.
  - The rent that has not been paid and all future rent for the remainder of the lease will be owed.
  - The duty to litigate will be placed on the landlord. This may delay the landlord from collecting rent. If the landlord does not litigate, then the tenant can be released from the lease.
- This is a strategy a tenant could employ, but there is currently no indication which side the court system would side with. The tenant would then need to prove that they have a legal right to break the lease. This may include defenses such:
  - Commercial Frustration
  - Impossibility/Impracticability
  - Force Majeure (this clause may or may not be in the lease agreement)
  - Civil Code Section 1511

## IS NEGOTIATING OR LITIGATING THE BEST OPTION?

- **Check Tenant's Financial Condition**
  - Are the tenant's financial issues short or long term?
  - How much time is left on the lease?
  - Look at the tenant's bank statements, credit reports, tax returns and profit and loss statements. Is the tenant at risk of bankruptcy?
- **Figure Out Your Goal**
  - Is the current landlord-tenant relationship worth preserving for the future?
  - Should the landlord retain a struggling tenant?
  - Should landlord ask for something in return for concession?
  - Will landlord's lender allow a lease modification?
  - Should landlord attempt to replace the tenant?
  - How long will it take to replace the tenant?
  - What rate will a new tenant be willing to pay?
  - What will it cost to replace the existing tenant?
- **Consider the Pros and Cons of Litigation**
  - Advantages:
    - Ends negotiations and any stall tactics between parties
    - Gives negotiation leverage
    - Starting the clock on eviction- increases the likelihood of assets to collect
  - Disadvantages:
    - Time and money
    - Stressful
    - Destruction of tenant-landlord relationship
    - Finding another tenant during COVID-19 may be difficult

## ADDITIONAL RESOURCES

### **Watch the EDC's previous renting related webinars:**

Visit the [EDC COVID-19 Business Resources Page](#) to review recorded webinars, presentation slides and handouts highlighting key information:

- September 24: Creative Solutions for Landlords and Tenants During COVID-19
- July 23: Guidance for Renters and Landlords During COVID-19

### **Online Resources:**

- Specific county and city ordinances: [NOLO COVID-19 CA Eviction Moratoriums \(Bans\) and Tenant Protections](#)
- For more information on moratorium related eviction guidelines in Ventura and Santa Barbara Counties: [CLICK HERE](#)
- Tenant and landlord protection guidelines, forms and resources: [CA Department of Real Estate: Housing Is Key](#)