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GUIDANCE FOR RENTERS AND LANDLORDS DURING COVID-19

Thank you for joining the EDC & David Almaraz, ESQ. from Albert, Barr & Grant APLC for our webinar on Guidance for Renters and Landlords During COVID-19 on July 23, 2020.

Quick Considerations

- It is important to review your lease agreement as it will define how you negotiate, move forward, and communicate with your tenant or landlord. The lease will help each side determine what their rights are.
- The moratoriums do not relieve the tenants from paying their rent, it is only 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.
- There are abatement provisions within the lease that is usually written in terms of destruction of the residence, but this could be discussed as a potential solution.
- If a tenant has Business Interruption Insurance, a claim should be submitted.

What happens if a tenant turns in the keys and walks away?

- This is considered “abandonment” and is a breach of the lease agreement.
- If a tenant walk’s away, the landlord can claim damages based on Civil Code 1951.2 Controls.
 - o The rent that has not been paid and all future rent for the remainder of the lease will be owed.
 - o The duty to litigate will be placed on the landlord. This can delay the landlord from collecting rent since the county courts are currently not serving eviction lawsuits or writs of possession. If they do 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 the break the lease. This may include defenses such:
 - o Commercial Frustration
 - o Impossibility/Impracticability
 - o Force Majeure (may or may not be in your lease agreement)
 - o Civil Code Section 1511

Factors to Consider for Both the Tenant & Landlord

- What is the relationship like between the tenant & landlord?
 - o Tenants are encouraged to have open conversations with their landlords regarding their situation. Ask what potential solutions there are for both parties, which could include rent deferral or abatement. If an agreement cannot be made, follow the applicable moratoriums.
- Is there a personal guarantee?
 - o If there is not, a landlord will be suing an entity with no assets to repay the rent with. If there is, the landlord can sue the tenant and their company.
- How much time is left on the lease?
 - o A longer lease may allow for rent to be payed back over a longer period. A shorter lease may help prevent litigation due to the little amount of damages.

- Can the tenant be easily replaced?
 - o The type of business will determine how easily the space can be rented to a new business. This may provide an incentive for the landlord to engage in a discussion of options to keep the current business.
- Is the tenant at risk of bankruptcy?
 - o Chapter 7 Bankruptcy dissolves the business and thus it cannot repay rent.
 - o Chapter 11 Bankruptcy reorganizes the business' debt and they may then reject the lease.

Government Responses to Leasing During COVID-19

- State of California
 - o There is a moratorium on evictions until September 30, 2020.
 - o There is currently no timeline for the payback of rent.
 - o Local communities have the authority to suspend evictions.
- Ventura County (in addition to the state's responses)
 - o The eviction moratorium for nonpayment of rent is until September 30, 2020.
 - o Tenants must notify landlords within 30 days of rent being due that they cannot pay due to COVID-19.
- Santa Barbara County (in addition to the state's responses)
 - o Tenants must give written notice of failure to pay rent and be prepared to demonstrate their inability to pay. David suggests providing landlords with a profit and loss statement instead of a bank statement.

Have you been unable to pay your rent due to COVID-19?

If you have not done so, it is important that you notify your landlord through filling out the "Notice of Coronavirus-Related Inability to Pay Rent" which can be found on our website at <https://edcollaborative.com/covid19/>

Check your lease's notice addendum to determine the best way to contact your landlord.

For more information on COVID-19 moratorium related eviction guidelines in Ventura and Santa Barbara County please visit https://gsiodac.blog/moratorium-related-to-covid-19-eviction-guidelines/#Update_4/3/2020

If you have specific questions you can reach out to David.

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You can watch David's advice on our website!

Visit the Economic Development Collaborative's COVID-19 Business Resources page to watch previous webinars and access more information, resources, and guides to help your business at <https://edcollaborative.com/covid19/>