Evictions of Commercial and Residential Tenants Can Resume in California. Now What?

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California courts will start hearing eviction lawsuits for commercial and residential properties on September 2, 2020. The Courts' stay on unlawful detainer cases (i.e., eviction proceedings), in place since April 2020, will end on September 1, 2020. Barring last-minute laws enacted by the California legislature to protect Tenants, the state may see widespread evictions of commercial and residential Tenants.

In an eviction lawsuit, Tenants will owe Landlords all rents not paid as of date. Tenants may also owe other lease-related costs, fees, charges, interest, penalties, late fees and/or attorney fees. Landlords will require Tenants to comply with and perform on other terms of their leases. Failure to pay or comply can result in a money judgment against the Tenant, negatively impacting credit scores and future ability to lease premises. Court judgments can be enforced against the Tenant for decades, putting Tenants in a tight spot.

However, Landlords are in a tight spot as well. Vacancy rates are at an all-time high due to the economic devastation of Covid-19. Tenants who can pay Landlords the full or majority of the rents on time are dwindling as lockdowns continue. Landlords have to consider the impact of vacancies and rent gaps on their mortgages and lenders. Eviction lawsuits cost money and can be time-consuming, especially given the current COVID-related backlog of eviction cases. This means Tenants can continue in place while the unlawful detainers are pending in Court. Even if the Landlord wins the eviction case, the Tenant may not afford to pay on the judgment, and the Landlord is now out of pocket even more cash paid for the lawsuit with only a future hope of collecting from the Tenant.

So, what practical steps can landlords and tenants take to limit losses and maximize returns? Here are tips for Landlords and

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Tenants to handle evictions effectively during Covid-19.

Landlords should consider consulting with a lawyer on ordinances and laws before filing an eviction and explore non-eviction remedies, and Tenants should seek advice from a lawyer to understand their options before approaching the Landlord.

How can Landlords effectively handle evictions?

- Landlords must organize and have all documentation concerning the Tenant ready. This includes:
  - The lease agreement
  - Landlords' requests to the Tenants to pay rent before/during Covid-19
  - Tenants' responses to the Landlords' requests, if any
  - Proof of any oral or written rent deferral arrangements or lease restructuring/modification between the Landlord and Tenant
  - Proof of any partial or complete rent payments by the Tenant.
- Ensure there are no County or City moratoriums on evictions of commercial and/or residential Tenants in effect where the property is located. See our Updated Fact Sheet on Eviction & Rent Increase Moratoriums of August 24, 2020. Our Initial Fact Sheet on Eviction & Rent Increase Moratoriums of May 21, 2020, is also important to read.
- Check whether California has enacted a statewide law impacting evictions of Tenants and whether this applies to commercial and/or residential Tenants.
- Ensure any such payment plan or lease restructuring is a valid legal contract between the parties and in writing. Also, ensure it is quickly enforceable by the Courts should the Tenant default on the payment plan, lease restructuring, or other arrangements. If not, you would have needlessly granted a defaulting Tenant more time to stay on your property.
- Contact the Tenant before filing the lawsuit to determine if the Tenant is agreeable to a rent payment plan or a lease

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restructuring/modification that is workable for both sides. Engage in meaningful negotiations with the Tenant. See our Tips for Negotiating Leases for Landlords & Tenants.

- Wait until after September 2, 2020, to file your unlawful detainer/eviction lawsuit against the Tenant – if you are not impacted by 2 and 3 above.
- It is also critical that any such contract between the parties complies with all state, County, and City eviction and rent increase moratoriums, laws, and ordinances, or the agreement could be deemed void and unenforceable. If it is, the Landlord will be back to square one and without the protections of the contract against a defaulting tenant.

How Can Tenants Effectively Handle Evictions?

- Keep all documentation concerning your tenancy ready, including:
  - The lease agreement
  - Proof of all rent payments made to the Landlord, whether of partial or full rent
  - Proof of all requests to the Landlord for rent deferral during Covid-19, whether by email, letter, text message or phone call
  - Proof of the "Financial Impact" of Covid-19 on the Tenant with all necessary documents to support it. See our Updated Fact Sheet on Eviction & Rent Increase Moratoriums on ways to demonstrate the financial impact of Covid-19 on the Tenant and consequent inability to pay rent.
- Check your local County and City ordinances and laws to determine if their Eviction and Rent Increase Moratoriums apply to the premises you are leasing. See our Updated Fact Sheet on Eviction & Rent Increase Moratoriums of August 24, 2020. Our Initial Fact Sheet on Eviction & Rent Increase Moratoriums of May 21, 2020, is also important to read.
- Check whether California enacts a statewide ban on evictions that goes into effect at any time while your eviction lawsuit is

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pending. Courts are not setting Unlawful Detainer trials for at least 60 days after a request for trial is made. An eviction ban that comes into effect at any time while your case is pending could be helpful to the Tenant.

- Negotiate collaboratively with your Landlord to work out an alternate resolution to eviction – in the form of a rent deferral payment plan, a lease restructuring, any other arrangement with the Landlord that avoids or delays an eviction.
- Ensure any Tenant arrangement or payment plan or lease restructuring is documented in writing in a legally valid contract with the rights and obligations of Landlord and Tenant clearly set out.
- Negotiate for adequate time for Tenant to perform its obligations under the lease, so you don't box yourself into a corner at a later date. Be clear Tenant can perform its new obligations or do not sign the contract. If Tenant knows or has reasonable belief ahead of time that Tenant will not be able to comply with its new obligations, find another alternative with the Landlord. Otherwise, Tenant will likely end up with a court judgment against it for breach of the new contract or lease provisions.

AlvaradoSmith assists commercial Landlords and Tenants in rent and lease negotiations. We represent Landlords in drafting rent deferral payment plans, lease restructuring, lease terminations, and other Tenant arrangements.

Monisha Coelho represents clients – from startups to multinational corporations – resolve business and real estate disputes in state and federal court litigation. She has particular expertise handling a wide range of real estate issues involving landlords, traditional and hard money lenders, and developers. She is licensed to practice law in India and advises clients on cross-border US-India business transactions and litigation.

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