

COVID-19 Real Estate Relief Efforts for Retailers

April 10, 2020

While the lodging sector was the first to be impacted by the COVID-19

pandemic as travel virtually ground to a halt, the retail sector wasn't far behind



with social distancing guidelines and eventual shuttering orders implemented by most state governors and/or city mayors.

Now that April 1st has passed, a glimpse into retailers' ability and/or willingness (given future uncertainty) to pay rent is now available. A special Pulse Poll commissioned by the [Wall Street Journal](#) suggests that about half of U.S. small businesses haven't paid their full rent or mortgage for the month of April. In addition, [news reports](#) indicate that some major retail chains announced prior to April 1st that they would not pay their April rent in full; with [landlords reporting](#) that one major sporting goods retailer offered to pay 50% rent on its 384 closed U.S. stores, and when the stores reopen, to then pay a percentage of sales in lieu of any rent for 12 months and a national restaurant chain [announcing](#) that it will not be able to pay its April rent at its nearly 300 locations.

A review of legislative actions taken by governments in larger retail markets illuminates opportunities for relief available to retailers and potential issues for landlords in exercising their rights under leases. Below is a summary of commercial real estate eviction moratoriums and other commercial real estate relief actions that impact landlords, tenants, lenders and borrowers in six states with significant concentrations of retail tenancies.

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State	Eviction Moratorium	Other Relief Action for Landlords or Tenants
<p>California</p>	<p>State Judicial Action: Two emergency rules limiting evictions and foreclosures were passed by the CA Judicial Council on 4/6/2020. The first ever Emergency Rules of the CA Rules of the Court (the “Emergency Rules”) effectively suspend all eviction and foreclosure proceedings, unless necessary to protect public health and safety. The rules supersede earlier, narrower eviction and foreclosure restrictions within Governor Newsom’s previous executive orders. The Emergency Rules continue to apply for 90 days after the Governor ends the state of emergency related to the pandemic. [Emergency Rules]</p> <p>State Executive Order: Financial institutions holding home or commercial mortgages (including banks, credit unions, government-sponsored enterprises and institutional investors) are <i>requested</i> to implement an immediate moratorium on foreclosures and related evictions, when the foreclosure or foreclosure-related eviction arises out of substantial decrease in household or business income due to COVID-19. [Executive Order N-28-20]</p> <p>Los Angeles: No landlord may evict a commercial tenant in Los Angeles during the COVID-19 emergency if the tenant is unable to pay due to circumstances related to the pandemic, including:</p> <ul style="list-style-type: none"> • Loss of business income due to a COVID-19 related workplace closure • Child care expenditures due to school closures • Health care expenses related to being ill with COVID-19 or caring for a member of the tenant’s household who is ill with COVID-19 • Reasonable expenditures that stem from government-ordered emergency measures. <p>Tenants will have up to three months following the expiration of the local emergency period to repay back due rent. [Public Order Under City of Los Angeles Emergency Authority]</p> <p>Other Cities: A growing number of cities passed bans on evictions for commercial tenants related to tenants’ financial hardship due to COVID-19 (such local action was explicitly permitted by the state government in Executive Order N-28-20 – see the</p>	<p>Any state laws that would pre-empt or otherwise restrict localities from taking actions that are intended to limit certain residential or commercial evictions are suspended (therefore allowing localities to provide eviction relief without being in fear of state law conflicts). [Executive Order N-28-20]</p> <p>Mortgage Relief: Large banks, including Citigroup, JPMorgan Chase, US Bank, Wells Fargo and approximately 200 state-chartered banks have offered the following relief to borrowers economically impacted by COVID-19:</p> <ul style="list-style-type: none"> • Mortgage forbearances of up to 90 days • No reporting of late payments to credit reporting agencies for borrowers taking advantage of these relief programs • Moratorium on evictions and foreclosure sales • Waiving or refunding of late fees. [Office of Governor Gavin Newsom] <p>Small Business Loans and Loan Guarantees: Small businesses of 1-750 employees that are negatively impacted by the COVID-19 crisis but who do not qualify for federal funds can apply for a loan guarantee from the CA state government’s allocation of \$50 million of loan guarantees. Small businesses with less than \$5 million in taxable sales can also apply for a one-year deferral of up to \$50,000 in sales and use taxes. Additionally, a 90-day extension was granted to small businesses to pay sales taxes if their return is less than \$1 million in tax. [Office of Governor Newsom]</p> <p>Los Angeles: All deadlines within the LA Municipal Code related to various real estate matters are tolled and suspended until 4/19/20, including deadlines concerning zoning, building permits and LA’s Cultural Heritage Ordinance. [Public Order Under City of Los Angeles Emergency Authority]</p>

State	Eviction Moratorium	Other Relief Action for Landlords or Tenants
California (continued)	<p>top of the next column). The eviction moratoriums last until 5/31/20 and the cities include:</p> <p>San Gabriel Costa Mesa</p> <p>Coachella Concord</p> <p>Emeryville San Benito</p>	
New York	<p>The enforcement of evictions or foreclosures for commercial property in New York state is on hold for a period of 90 days from March 20, 2020 [Executive Order No. 202.8].</p>	<p>Rent Abatement: Although there has been proposed legislation to forgive or reduce rent obligations for residential tenants and small commercial tenants for up to 90 days, no rent abatement policies have been enacted.</p> <p>Small Landlord Assistance Fund: Proposed legislation would create an emergency assistance fund to provide landlords with smaller rent rolls, who receive reduced rent payments due to rent abatement legislation, monetary assistance for the operation and maintenance of their properties.</p> <p>Security Deposit Access: A proposed “Renter’s Relief” plan would require landlords to offer tenants the option to use already-paid security deposits in place of their April rent payments. It is unclear whether this would apply to commercial tenants.</p>
Illinois	<p>Most civil proceedings are suspended in Cook County (Chicago) until at least June 17, 2020. Presumably commercial evictions are included since the administrative order covers <i>“all matters in all Districts and Divisions of the court.”</i> (Note this is distinct from the moratorium on sheriff enforcement of eviction orders relating to residential leases, which lasts until May 18, 2020.) [GAO - 2020-01 (amended March 30, 2020)]</p>	<p>Illinois Dept. of Financial and Professional Regulation “strongly urged” financial institutions to offer forbearance and other accommodations.</p>
Florida	<p>The Florida Supreme Court discontinued all proceedings except for a discrete list of “essential court proceedings” and “critical proceedings” related to public health, effectively halting eviction proceedings until at least April 17, 2020. [AOSC20-17 (Mar. 17, 2020)]</p> <p>Miami-Dade Police announced that they will not be enforcing evictions for the time being, with no definite end date.</p>	<p>Under Executive Order 20-52, and pursuant to existing emergency legislation, a tolling period has been established for the duration of the declared state of emergency in the state <i>plus</i> six months, extending real estate related deadlines, such as building permits and water management district.</p>

State	Eviction Moratorium	Other Relief Action for Landlords or Tenants
Nevada	Under a state-wide executive order, evictions and foreclosures for both residential and commercial tenants are prohibited for the duration of the state of emergency. Any unpaid rent or mortgage payments will become due after the state of emergency (declared on 3/12/2020) is terminated. All late fees have also been waived under the executive order. [Declaration of Emergency Directive 008]	
Texas	<p>While no statewide orders have been issued in Texas, executive orders have been issued at the county level. Below is a summary of the actions taken by certain counties.</p> <p><u>Austin</u>: On March 17, Travis County (Austin, TX) issued an order stating that no eviction proceedings (residential or commercial) would be held until after May 8, 2020 and that no writs of possession would be issued until May 13, 2020. [Travis County Order]</p> <p><u>Fort Worth</u>: On March 17, Tarrant County (Forth Worth, TX) issued an order that suspended all scheduled eviction proceedings until further notice. The order also noted that no writs of possession in eviction cases would be issued until the Court received a new directive. The order did not distinguish between commercial and residential leases. [Tarrant County Order]</p> <p><u>Dallas</u>: On March 18, Dallas County (Dallas, TX) issued an order that suspended eviction hearings and writs of possession for at least 60 days. The order did not distinguish between commercial and residential leases. [Dallas County Order]</p> <p><u>San Antonio</u>: On March 23, Bexar County (San Antonio, TX) ordered that rental property owners suspend evictions for at least 30 days and also ordered that foreclosure proceedings be suspended for at least 30 days. The order did not distinguish between commercial and residential leases. [Bexar County Order]</p>	N/A

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