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PERSPECTIVE

SF mayor issues proclamation providing protection to commercial tenants

By C.J. Higley and Jonah Trotz

On March 17, San Francisco Mayor London Breed issued a proclamation providing eviction protection to certain small and medium sized businesses in San Francisco who are unable to pay rent due to the COVID-19 pandemic. Prior to the mayor's proclamation, California Gov. Gavin Newsom issued an executive order stating, among other things, that any state law restricting local governments' ability to prevent commercial tenant evictions due to non-payment of rent during the pandemic would be suspended. The executive order acknowledged that local governments may need to prevent commercial tenant evictions to promote the public health.

Commercial tenants registered to do business in San Francisco with worldwide 2019 gross receipts of \$25,000,000 or less that fail to make a rent payment which is due on or after March 17 are entitled to written notice from their landlord, setting forth a "cure period" of not less than one month, before a landlord can recover possession of the premises because of such missed payment.

Prior to the end of the cure period, the tenant must either pay the missed rent or provide documentation to the landlord showing that the tenant is unable to make the rent payment due to "a financial impact related to COVID-19." The proclamation defines "financial impact" broadly, encompassing reduced consumer demand, reduced open hours, or temporary closure of the business.

If the tenant provides the documentation described above, showing that the tenant cannot pay



New York Times News Service

San Francisco Mayor London Breed, speaks about new measures to Charles "CJ" Higley is a real estate prevent the spread of the coronavirus on Monday, March 16.

the rent owed, the cure period is extended by one month, and the tenant and landlord are encouraged to work together in good faith to establish a repayment plan. If the landlord and tenant cannot establish a repayment plan, then, prior to the extended expiration date of the cure period, the tenant must pay the rent owed or again provide documentation showing that it still cannot make the payment. This process of month-long extensions to the cure period can continue up to a total of six months after the date the rent payment was originally due. At that point, landlord may proceed with the eviction for non-payment of rent.

The proclamation does *not* relieve any tenant from its obligation to pay rent; it only provides for a cure period during which the tenant must pay the missed rent. Further, the proclamation does not prevent landlords from recovering the rent by means other than eviction, such as applying a security deposit.

The proclamation expires upon the *earliest* to occur of: (a) 30 days after March 17 (April 16), (b) until the mayor's proclamation of local emergency is terminated, or

(c) until a further proclamation is issued by the mayor. However, the proclamation may be extended by 30 days if warranted at the time the proclamation would otherwise expire. It is important to note that the cure periods provided for in the proclamation shall survive the expiration of the proclamation. Therefore, if the proclamation is not extended by 30 days, only those rents due between March 17 and April 16 (for many this will be rent due April 1) will be subject to the proclamation. If the proclamation is extended by 30 days, rent

payments due between March 17 and May 16 would be subject to the required cure periods.

The proclamation is silent on the issue of whether pass-through expenses and other amounts owed under commercial leases are subject to the required cure periods, although many leases will define these charges as "rent." Additionally, the proclamation does not discuss landlords' ability to evict tenants for non-monetary breaches. So while the proclamation does not prohibit evictions for non-monetary breaches, the lack of express language on the subject may create uncertainty in some cases, particularly where a tenant has a valid claim for a cure period because of nonpayment of rent.

Clearly, issues such as those raised above and a landlord's other remedies for non-payment of rent will vary from lease to lease, but landlords must be aware of the proclamation and mandatory cure period prior to moving to evict certain tenants for non-payment of rent due while the proclamation is in effect. ■

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