

ATTORNEY CONTACTS

ERIC M. GEORGE egeorge@bgrfirm.com (310) 274-7100	PETER W. ROSS pross@bgrfirm.com (310) 274-7100	NATHAN J. HOCHMAN nhochman@bgrfirm.com (310) 274-7100	KEITH J. WESLEY kwesley@bgrfirm.com (310) 274-7100	JOHN SCHOLNICK jscholnick@bgrfirm.com (310) 274-7100
KATHRYN MCCANN kmccann@bgrfirm.com (310) 274-7100	MARIBETH ANNAGUEY mannaguey@bgrfirm.com (310) 274-7100	CARL ALAN ROTH croth@bgrfirm.com (213) 725-9800	NOAH S. HELPERN nhelpern@bgrfirm.com (213) 725-9800	RICHARD A. SCHWARTZ rschwartz@bgrfirm.com (213) 725-9800

SELECTED COVID-19 LEGAL IMPLICATIONS FOR COMMERCIAL LANDLORDS AND TENANTS

The month of April 2020 is already presenting significant COVID-19 legal implications for commercial landlords in Los Angeles and across the country. From health and safety to remedies for nonpayment of rent, commercial landlords and tenants must take care to properly assess the evolving landscape. Browne George Ross LLP's COVID-19 Rapid Response Working Group is assisting its clients in this industry to identify and address these issues, which include:

- **Health & Safety Issues.** As part of their duty of reasonable care owed to their tenants, landlords must provide for reasonably safe common and tenant-specific areas. For areas that landlords are responsible for keeping reasonably safe, they may be well advised to follow the COVID-19 related housekeeping practices published by federal, state or local authorities.¹ Depending on their individual circumstances and lease agreements, landlords should also be aware of situations where they may need to deny tenants access to the premises to protect tenants, occupants, employees and users. For instance, a lease agreement that requires a landlord to provide certain services, *e.g.* janitorial and security services, creates a duty on that landlord to maintain a safe environment. However, COVID-19's impact may qualify as a force majeure event, thereby suspending the landlord's obligation to provide such services and requiring the landlord to deny tenants access to the premises in order not to breach the duty.
- **Landlord/Tenant Rental Payment Issues.** The first rent payments are coming due since Governor Gavin Newsom issued Executive Order N-33-20,² which requires all nonessential work within the state be halted and all residents to stay home. Landlords may find that their tenants are unable to meet their monthly rent obligations. Commercial landlords should be aware of rent abatement clauses in their lease agreements and consider tendering claims to their insurers for rental loss.
- **Rental Guarantee Insurance.** Landlords should review their insurance policies and insurance requirements under leases and loan documents. While traditional rental loss insurance reimburses a landlord for lost rental income while the property is being repaired or rebuilt under a loss covered by property insurance, rent guarantee insurance provides coverage when a tenant stops paying rent. Typically, rental guarantee

insurance policies are issued to renters and name landlords as beneficiaries who may recover past due rent under the policy.³

- **Government Programs.** Landlords should also work with their tenants who are struggling to pay rent and encourage their tenants to take advantage of government assistance programs. On March 27, 2020, a sweeping \$2.2 trillion stimulus package known as the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law. The package includes a \$350 million Small Business Administration (“SBA”) loan guarantee program, entitled the “Paycheck Protection Program.”⁴ The Paycheck Protection Program includes a loan forgiveness provision for certain costs incurred, including rent payments, by an eligible borrower, and any cancelled indebtedness resulting from the loan forgiveness provision is excluded from the borrower’s gross income for U.S. federal income tax purposes.⁵

- **Eviction Issues.** Commercial landlords should be aware of local orders affecting their ability to evict tenants. For instance, San Francisco⁶ and San Diego⁷ have banned commercial real estate evictions of certain covered tenants. And on March 19, 2020, Los Angeles County passed an order that places a moratorium on commercial and residential evictions.⁸ The order, which applies to unincorporated areas of Los Angeles County, bars a residential or commercial landlord from evicting a tenant for nonpayment of rent, late charges, or fees if the tenant demonstrates an inability to pay due to financial impacts related to COVID-19.⁹ The eviction prohibition is effective through May 31, 2020 and provides tenants with six months following the termination of the order to pay any amounts due that are covered by the order.¹⁰ On March 27, 2020, Governor Newsom announced a temporary statewide ban on evictions for those affected by COVID-19.¹¹ The order covers those who have lost work because of the pandemic, have become sick, or have had to take care of family members with COVID-19. However, renters must provide their landlords with a seven-day written notice prior to their nonpayment and are obligated to eventually pay all rent owed.

For further information and advice specific to your situation, contact any one of the Browne George Ross LLP attorneys listed above.

¹ For example, although prepared for employers, landlords can adopt OSHA’s “Guidance on Preparing Workplaces for COVID-19” as it relates to housekeeping practices for areas that landlords have a duty to keep reasonably safe. *See Guidance on Preparing Workplaces for COVID-19*, OSHA at 9, available at <https://www.osha.gov/Publications/OSHA3990.pdf>.

² <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

³ *See Valley View Shopping Ctr. Ltd. v. United States*, 210 F.2d 42, 46 (Ct. Cl. 1976) (lessor, as beneficiary of policy issued to lessee, was entitled to recover past due rent accruing after a default, which was construed as any failure to perform a lease covenant).

⁴ Coronavirus Preparedness and Response Supplemental Appropriations Act, H.R. 6074, 116th Con (2020).

⁵ *Id.* at § 1106(i).

⁶ Fourth Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency Dated February 25, 2020, March 18, 2020, available at

https://sfmayor.org/sites/default/files/Supplement_v4_03182020_Stamped.pdf (commercial eviction moratorium applies to businesses that have less than \$25 million in annual gross receipts);

⁷ Ordinance Number O-21177, March 25, 2020, available at

https://docs.sandiego.gov/council_reso_ordinance/rao2020/O-21177.pdf. (tenants must demonstrate a substantial decrease in income or medical expenses caused by COVID-19 in order to qualify).

⁸ Executive Order of the Chair of the County of Los Angeles Board of Supervisors Following Proclamation of Existence of a Local health Emergency Regarding Novel Coronavirus (COVID-19), March 19, 2020, available at https://covid19.lacounty.gov/wp-content/uploads/19032020HP_MFP_M577143825.pdf

⁹ *Id.* at § 1(a).

¹⁰ *Id.* at § 1(e).

¹¹ Executive Order N-37-20, available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-EO-N-37-20.pdf>.