

PPMA

**COMMERCIAL RENTALS
LEGAL UPDATES, ORDERS, THREATS AND
BEST PROFESSIONAL RESPONSE**

June 2020

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Senate Bill 939

Adds Civil Code Section 1951.9

Notice Required

Eviction Protection

**Mandatory Lease Negotiation and
Termination Right**

Legislative process and legal challenges

SB 939

Notice Required

Written notice of protections afforded by the bill MUST be provided to commercial property tenants within 30 days of the effective date of the bill.

SB 939

Eviction Protection

SB 939 would prohibit landlords from serving a 3day notice or evicting tenants of commercial real property, during the pendency of the state of emergency proclaimed by the Governor

Pending evictions after March 4, 2020 retroactively declared void

Like Preston's bill, no eviction can EVER be based on the unpaid rent from the period of the state of emergency

SB 939

Eviction Protection

Prohibition remains in effect until Dec 31, 2021 or declared end of emergency, whichever is later

Rent not paid during state of emergency is due 12 months after emergency ends unless later payment has been agreed. But it can not be the subject of nonpayment of rent eviction

No pending writ can be enforced

SB 939

Mandatory Lease Negotiation and Termination Right

Applies to “Small Business,” or an eating or drinking establishment, place of entertainment, or performance venue. (Does not apply to publicly traded companies)

Tenant may serve written notice affirming, under the penalty of perjury, that:

- 1. they meet the financial criteria of the law, 40% revenue decline or 25% loss of capacity, and**
- 2. stating the lease modifications the tenant desires to obtain (negotiation notice).**

SB 939

Mandatory Lease Negotiation and Termination Right

If the L & T do not reach a mutually satisfactory agreement within 30 days, tenant may terminate the lease without any liability for future rent, fees, or costs that otherwise may have been due under the lease.

Guarantors also released

Tenant responsible for back rent prior to state of emergency, but only three months of rent during the emergency, and no scheduled rent under the lease for the balance of the term

SB 939

Legislative Status

**June 9, 2020 Senate Appropriations Committee action was
“Placed on APPR. Suspense file.”**

**This “suspense file” designation indicates further review by
Senate Appropriations Committee before it can move
forward to a Senate vote.**

**As an urgency measure, this will require 2/3 to pass on the
Senate floor**

SB 939

Legislative Status

Scott Wiener, acknowledging huge popular push back is promising amendment, reportedly told Commercial Observer that he is “significantly amending the bill” That includes ditching the plan to allow financially –impacted tenants to end their leases if they didn’t come to a new agreement with landlords after 30 days

“[It] was causing a lot of blowback,” Wiener said. “And our goal, of course, is never for leases to be canceled, but rather to encourage renegotiation.”

<https://commercialobserver.com/2020/06/calif-lawmakers-significantly-amending-bill-to-renegotiate-break-leases/>

(No public record of any amendment yet)

SB 939

Legal Issue

The “Contracts Clause”

California Constitution, art. I, § 9:

“A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed.”

Similar provision in US Constitution

San Francisco Commercial Tenant Protection Mayoral Proclamations

**Mayoral Proclamation Declaring Emergency,
February 25, 2020**

**Fourth Supplement to Mayoral Proclamation, March 18,
2020 and Eighth Supplement to Mayoral Proclamation,
April 1, 2020**

**Effective dates have now been extended twice, by Executive
orders April 15 and May 14. Presently scheduled to expire
June 16.**

San Francisco Commercial Tenant Protection Commercial Eviction Moratorium.

**Commercial Tenants registered to do business in San Francisco
with worldwide annual gross receipts below \$25 million**

**Before seeking to evict a non-paying qualified tenant, for rent due
after March 17, 2020,**

- 1. Landlord must follow notice provisions of 4th supplement**
- 2. Allow a cure period of at least one month to pay the rent or
provide documentation**
- 3. If documentation provided, cure period extended one month**

San Francisco Commercial Tenant Protection Commercial Eviction Moratorium.

**Parties are encouraged to negotiate “in good faith” for a
“payment plan for the tenant to pay the missed rent”**

Rent remains due

**If no agreement, the process repeats for each month as long
as tenant continues to document**

**“Under no circumstances will the landlord be prohibited
from evicting for nonpayment of rent for more than 6
months after the rent became due.”**

What happens in September?

Lease Defenses You May Hear About

Force Majeure

Dependent on specific lease language

Generally does not excuse payment of rent.

May be a defense to claims of failure to perform other obligations

Lease Defenses You May Hear About

The Doctrine of Commercial Frustration

When the lease specifies and restricts the use of the premises to a specific purpose, the tenant may be given the right to terminate the lease under the doctrine of “commercial frustration” if it cannot use the premises for that purpose.

There must be a complete, or nearly complete, impossibility of using the premises for the purpose for which they were leased; a mere “substantial” frustration of purpose is not sufficient.

When the performance of the lease purpose is merely rendered more difficult or less profitable, the tenant cannot terminate the lease.