



Cornelius & Cohanghadosh, APC

23801 Calabasas Rd., Suite 100
Calabasas, California 91302
Phone: (818) 835-9159
www.thecalaw.com

Email: cornelius@thecalaw.com or cohanghadosh@thecalaw.com

March 27, 2020

NEWSLETTER: COVID-19 IMPACTS ON BUSINESSES, CHANGES IN LAWS AND RELIEF PROGRAMS

Many clients have called or emailed us with questions as to how their businesses will be impacted by the current emergency situation created by the COVID-19 virus and changes in the laws implemented to address the same. We are providing this newsletter with the latest information and changes in the law on the topics addressed herein. Our firm's focus is on real estate and business transactions and litigation and bankruptcy, but we have included information related to residential mortgage relief. The CARES Act relief package has been passed by both the Senate and House of Representatives and was signed into law by President Trump just a few hours ago. We will be sending out a follow up Newsletter as to the CARES Act shortly.

I. Real Estate Commercial and Residential Related Issues.

A. Commercial Properties.

i. Mortgage Relief.

Unfortunately, there are no broad based Federal or State programs to provide relief to commercial landlords, other than as to Freddie Mac and Fannie Mae multi-family mortgages as discussed below. As of today, unless your mortgage is with Freddie Mac and Fannie Mae, you must engage in one on one discussions with your lender and negotiate a forbearance agreement or delay in payment plan. Under the CARES Act, your property holding entity may qualify as a small business and you maybe able to access the new Small Business Administration 7(a) Loan Program (however, the main thrust of this program is to assist with paying employees). Our firm, C&C, is well versed in such negotiations based on significant experience obtained in the Savings and Loan Crises of the late 1980s and early 1990s and the Great Recession of 2008-2010. ***Please let us know if you need assistance in putting a package together to discuss a forbearance agreement with your lender.***

Currently, as discussed above, the only mortgage relief program for commercial landlords applies to multi-family buildings for mortgages issued by or sold to and presently owned by and serviced by Fannie Mae and Freddie Mac. On March 23, 2020, the Federal Housing Finance Agency issued the following:

- Today, to keep renters in multifamily properties in their home and to support multifamily property owners during the coronavirus national emergency, the Federal Housing Finance Agency (FHFA) is announcing that Fannie Mae and Freddie Mac (the Enterprises) will offer



Cornelius & Cohanghadosh, APC

23801 Calabasas Rd., Suite 100
Calabasas, California 91302
Phone: (818) 835-9159
www.thecalaw.com

Email: cornelius@thecalaw.com or cohanghadosh@thecalaw.com

March 27, 2020

**NEWSLETTER: COVID-19 IMPACTS ON BUSINESSES,
CHANGES IN LAWS AND RELIEF PROGRAMS**

multifamily property owners mortgage forbearance with the condition that they suspend all evictions for renters unable to pay rent due to the impact of coronavirus. The eviction suspensions are in place for the entire duration of time that a property owner remains in forbearance. The forbearance is available to all multifamily properties with an Enterprise-backed performing multifamily mortgage negatively affected by the coronavirus national emergency.

"Renters should not have to worry about being evicted from their home, and property owners should not have to worry about losing their building, due to the coronavirus. The multifamily forbearance and eviction suspension offered by the Enterprises should bring peace of mind to millions of families during this uncertain and difficult time," said Director Mark Calabria. "The Enterprises are working with mortgage servicers to ensure that these programs are implemented immediately so that property owners and renters experiencing hardship because of the coronavirus can get the assistance they need."

The multifamily mortgage forbearance and eviction suspension programs are the latest actions that FHFA has announced to ensure the Enterprises fulfill their missions during the coronavirus national emergency. Other actions include:

- **Suspending foreclosures and evictions for Enterprise-backed single-family mortgages at least 60 days;**
- **Forbearance for Enterprise-backed single-family borrowers facing hardship due to coronavirus;**
- **Flexibilities for appraisal and employment verifications for single family homes;** and
- **Additional dollar roll transactions for the Enterprises.**

FHFA and the Enterprises will continue to monitor the impact of the coronavirus national emergency on the housing finance market and update our policies as necessary.

Please let us know if you need assistance in contacting or coordinating with Freddie Mac or Fannie Mae to obtain a forbearance.

ii. Collection of Rent and Tenant Evictions.

In order to service mortgages and pay operating expenses, landlords need to be able to collect rent. However, several limitations have been ordered as to collecting rent and commencing eviction actions, unlawful detainer (UD) proceedings.



Cornelius & Cohanghadosh, APC

23801 Calabasas Rd., Suite 100
Calabasas, California 91302
Phone: (818) 835-9159
www.thecalaw.com

Email: cornelius@thecalaw.com or cohanghadosh@thecalaw.com

March 27, 2020

**NEWSLETTER: COVID-19 IMPACTS ON BUSINESSES,
CHANGES IN LAWS AND RELIEF PROGRAMS**

-
- Los Angeles County and City: Evictions of any tenant in the city and county (***both residential and commercial***) that cannot pay rent due to health or economic effects caused by the coronavirus are prohibited. This prohibition was subsequently expanded to include tenants who would be removed for a landlord to exit the rental business (Ellis Act), or other “no-fault” evictions. Therefore, no party may remove occupied residential units from the rental market while the emergency order is in effect. Further, tenancies may not be terminated to remove a unit from the rental market until 60 days after the expiration of the emergency order. Residential tenants will be required to pay back any accumulated rent within **six** months of the expiration of the emergency order. Commercial tenants will be required to pay back any accumulated rent within **three** months of the expiration of the emergency order. This prohibition is currently in effect until April 19th, but is likely to be extended, and tenants may use the protections afforded here as an affirmative defense in any unlawful detainer action.
 - o Covered hardships include: (a) loss of business or personal income due to COVID-19 related workplace closures; (b) child care expenditures due to school closures; (c) 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; or (d) reasonable expenditures that stem from government-ordered emergency measures.

 - Los Angeles County Unlawful Detainer Courts (Eviction Courts) Closed: The Unlawful Detainer Courts have suspended all operations and no new date has been set for them to reopen. Effectively, evictions are completely on hold even if a landlord has a “for cause” eviction, like a breach of the peace. There are other solutions and other lawsuits may be filed and, certainly in a breach of the peace situation, the police should be called. ***If you have a situation with a tenant that is not paying rent or an eviction related issue, please contact us and we can assist you.***

 - State: Governor Newsom has not yet enacted a statewide ban on evictions, instead leaving the decision to local governments. His executive order on March 16, 2020 gave local governments the power to halt evictions when a renter can demonstrate hardship caused by the coronavirus emergency. The executive order remains in effect until May 31, unless conditions change.



Cornelius & Cohanghadosh, APC

23801 Calabasas Rd., Suite 100
Calabasas, California 91302
Phone: (818) 835-9159
www.thecalaw.com

Email: cornelius@thecalaw.com or cohanghadosh@thecalaw.com

March 27, 2020

**NEWSLETTER: COVID-19 IMPACTS ON BUSINESSES,
CHANGES IN LAWS AND RELIEF PROGRAMS**

- Federal:
 - o The Department of Housing and Urban Development has suspended evictions in public housing until the end of April.
 - o As described above, federal agencies are working to prevent evictions by conditioning mortgage relief programs on eviction suspensions by individual landlords.
- Private Sector: The National Multifamily Housing Counsel and the California Apartment Association have asked their members to halt evictions for the next three months for anyone affected by the coronavirus, suspend rent increases, and initiate payment plans for tenants.

B. Residential Properties.

- State: Wells Fargo, U.S. Bank, CitiBank, and J.P. Morgan Chase—along with 200 state-chartered banks and credit unions—have agreed with Gov. Newsom to defer mortgage payments for at least three months for eligible California homeowners that suffer hardships due to the coronavirus emergency. The application for this relief is made directly to your mortgage lender and you will need to provide some evidence of a financial hardship or impact due to COVID-19. *If you need to determine if your mortgage lender is participating in this program or in completing an application, please contact our office and we can assist you with the same.*
- Federal: The Federal Housing Finance Agency (FHFA) directed Freddie Mac and Fannie May to extend mortgage forbearance to any multifamily property owner who suspends evictions for renters unable to pay rent due to the impact of the coronavirus national emergency. The landlord must suspend evictions for the entire time that the mortgage remains in forbearance. This action expands on the FHFA's prior announcements to (a) suspend foreclosures and evictions for single-family mortgage holders for at least 60 days and (b) allow mortgage forbearance for single-family borrowers facing hardship due to the coronavirus. The Federal Housing Administration is following the same standards and guidelines for any FHA-backed mortgages. *If you need to determine if you qualify for this program, please contact our office and we can assist you with the same.*



Cornelius & Cohanghadosh, APC

23801 Calabasas Rd., Suite 100
Calabasas, California 91302
Phone: (818) 835-9159
www.thecalaw.com

Email: cornelius@thecalaw.com or cohanghadosh@thecalaw.com

March 27, 2020

**NEWSLETTER: COVID-19 IMPACTS ON BUSINESSES,
CHANGES IN LAWS AND RELIEF PROGRAMS**

- Private Sector:

- Ally Bank is deferring mortgage payments for up to 120 days for homeowners facing financial hardship due to an interruption in income.
- Bank of America has made “Home Loans Special Payment Forbearance” available on a month-to-month basis for homeowners with a hardship related to the coronavirus.

II. Taxes and Court Systems.

A. Tax Deadlines.

- State:

- Individual: Tax filing and payment deadlines for 2019 tax returns have been extended from April 15 to July 15, 2020.
- Property: The property tax deadline remains April 10, 2020. Neither the county nor the state has offered to postpone or extend this deadline.
- Business: The filing and payment deadlines for business entities filing (a) 2020 1st and 2nd quarter estimate payments, (b) 2020 LLC taxes and fees, and (c) 2020 non-wage withholding payments has been extended to July 15, 2020.
- The California FTB is following IRS guidance, so CA deadlines may be extended further if the IRS grants a longer relief period.

- Federal:

- The federal income tax filing and payment deadline has been extended to July 15, 2020 for all taxpayers, including individuals, trusts and estates, corporations, and other non-corporate tax filers as well as those who pay self-employment tax.
- This is an automatic extension, but filers who need additional time beyond July 15th may request a further filing extension.
- The CARES Act will provide for a deferral of employment tax through December 31, 2020. You are required to pay 50% of the amount deferred by December 31, 2021 and the balance by December 31, 2022. You can coordinate this with your payroll service provider or your accountant.
- The CARES Act will allow you to defer payment of any estimated corporate taxes until October 15, 2020.



Cornelius & Cohanghadosh, APC

23801 Calabasas Rd., Suite 100
Calabasas, California 91302
Phone: (818) 835-9159
www.thecalaw.com

Email: cornelius@thecalaw.com or cohanghadosh@thecalaw.com

March 27, 2020

**NEWSLETTER: COVID-19 IMPACTS ON BUSINESSES,
CHANGES IN LAWS AND RELIEF PROGRAMS**

B. Courts and Legal Proceedings.

- Los Angeles Superior Court: A General Order restricted courthouse access to authorized personnel only through June 22, 2020 and delayed all civil and criminal trials for 60 days. The Clerk's offices at all 38 courthouses of the Superior Court of Los Angeles are now closed to the public until further notice. Most courthouses, except Beverly Hills and Catalina, will remain open for time-sensitive, essential hearings. Jury service has been canceled and no jurors are to report until April 16, 2020. *If you have questions about your pending case and the status of the same, you can contact us.*
- Los Angeles County Unlawful Detainer Courts (Eviction Courts): As noted above, the Unlawful Detainer Courts have suspended all operations and no new date has been set for them to reopen. *If you have a situation with a tenant not paying rent or an eviction related issue, please contact us and we can assist you.*
- Federal – Central District of California: All courthouses are closed to the public except for hearings on criminal matters. Only emergency, time-sensitive civil cases will go forward (such as TRO's or preliminary injunctions), but such cases will proceed telephonically only. No other civil cases will be heard. Jurors will not be called until April 13, 2020 for either civil or criminal cases.
- Bankruptcy Court: All matters will proceed telephonically through May 1, 2020.

III. Breaches of Contract and Lease, Force Majeure and Common Law Defenses.

Many clients have contacted us about leases and purchase agreements, or other contracts being breached, and counterparties seeking to excuse performance based on defenses related to inability to perform, acts of God or force majeure provision on account of COVID-19. We are well versed in these disputes and can assist you. Below are some basic principles.

If you have to break (breach) a contract or someone is trying to break a contract with you, the primary issue will be whether the contract, agreement or lease contains a force majeure/Act of God clause, which, for instance could state:



Cornelius & Cohanghadosh, APC

23801 Calabasas Rd., Suite 100
Calabasas, California 91302
Phone: (818) 835-9159
www.thecalaw.com

Email: cornelius@thecalaw.com or cohanghadosh@thecalaw.com

March 27, 2020

**NEWSLETTER: COVID-19 IMPACTS ON BUSINESSES,
CHANGES IN LAWS AND RELIEF PROGRAMS**

“No party shall be liable for any costs or damages due to delay or nonperformance under this agreement arising out of any cause or event beyond such party’s control, including, without limitation, cessation of services hereunder or any damages resulting therefrom to the other party as a result of work stoppage, power or other mechanical failure, computer virus, natural disaster, governmental action, act of God, or communication disruption.”

Some of these clauses do not allow the payment of money to be suspended. For instance, many leases contain a similar provision, but it has an exclusion for rent or money:

“Except for rent or money due under this Agreement, no party shall be liable for any costs or damages due to delay or nonperformance under this agreement arising out of any cause or event beyond such party’s control, including, without limitation, cessation of services hereunder or any damages resulting therefrom to the other party as a result of work stoppage, power or other mechanical failure, computer virus, natural disaster, governmental action, act of God, or communication disruption.”

If a party has breached a contract or you believe that you need to breach a contract and your contract does not have a force majeure clause, then there are common law defenses to breach of contract of which you should be aware, including impossibility, impracticability and frustration of purpose.

If a contract *does* have a force majeure clause, then the courts usually find that it supersedes the common law defenses and they are not available to either a plaintiff or a defendant in a court proceeding. Force majeure clauses are interpreted to only apply to events beyond the parties’ control. Under most force majeure clauses, performance is delayed up to a stated time during force majeure events but is not excused. Thus, if the COVID-19 crisis only lasts 60 days, then performance is suspended and excused for just those 60 days. Under the common law defenses of performance is excused entirely and they are discussed below:

- **Impossibility/Impracticability**: A court may excuse a breach of contract for impracticability when by an unforeseeable event, performance has been rendered excessively difficult, expensive, or harmful. The unforeseen event must be beyond the control of the breaching party and the breaching party must not have expressly assumed the risk of the event occurring. Because the pervasive and rapid spread of COVID-19 and the subsequent declaration of national emergency was clearly unforeseeable at the beginning of this year, performance may be excused for contracts entered into before



Cornelius & Cohanghadosh, APC

23801 Calabasas Rd., Suite 100
Calabasas, California 91302
Phone: (818) 835-9159
www.thecalaw.com

Email: cornelius@thecalaw.com or cohanghadosh@thecalaw.com

March 27, 2020

**NEWSLETTER: COVID-19 IMPACTS ON BUSINESSES,
CHANGES IN LAWS AND RELIEF PROGRAMS**

the start of the pandemic. Application of this doctrine will of course depend on the facts of any particular case.

- Frustration of Purpose: Under this doctrine, performance may be excused when the unforeseeable event destroys the purpose of the contract (from the perspective of the breaching party) and the non-breaching party knew of that purpose at the time of entering the contract. Again, this is a fact-sensitive inquiry that will depend on the circumstances in each particular case.

If a party has breached a contract and claimed COVID-19, force majeure or asserted the common law defenses or, if you believe that you need to breach a contract on those grounds due to economic reasons, we can help you and you should contact us for assistance.

IV. Bankruptcy, Creditors Rights and Workouts.

In these uncertain times, you may have a party that owes you money that files for bankruptcy or, unfortunately, if your business is severely damaged by the COVID-19 outbreak, you may need to file for bankruptcy protection, for either your business or personally. We are a full-service bankruptcy law firm for both individuals and businesses for both debtor bankruptcies and workouts and for exercising creditors' rights. We can litigate within bankruptcy cases or, under certain circumstances, force cases to go back to State Court for resolution where you are ensured a jury for legal claims. We handle nondischargeability and adversary proceeds related to fraud, breach of fiduciary duty and fraudulent transfers. We are well versed in Chapter 7, 11 and 13 cases for representing debtors and creditors. *If a party is not paying you and has threatened or actually filed bankruptcy or, if you are concerned that you may need to file bankruptcy and have questions you want answered, we are here for you and you should contact us.*

V. CARES Act General Terms.

The \$2 Trillion CARES Act relief package has been passed by both the Senate and House of Representatives and was signed into law by President Trump just a few hours ago. We will update you on the relevant provisions shortly but generally it includes the following:

Direct payments to taxpayers: If you make less than \$75,000 a year (\$150,000 for couples), you'll get \$1,200 — faster if the I.R.S. has your direct-deposit information, later if they mail you



Cornelius & Cohanghadosh, APC

23801 Calabasas Rd., Suite 100
Calabasas, California 91302
Phone: (818) 835-9159
www.thecalaw.com

Email: cornelius@thecalaw.com or cohanghadosh@thecalaw.com

March 27, 2020

**NEWSLETTER: COVID-19 IMPACTS ON BUSINESSES,
CHANGES IN LAWS AND RELIEF PROGRAMS**

a check. There's an extra \$500 for each dependent child. People who make more get less; over \$100,000 a year (\$200,000 for couples), and you'll get nothing.

Expanded unemployment benefits: Larger checks for four months; an extra 13 weeks of eligibility; and assistance for freelancers, "gig" workers (like Uber drivers) and furloughed workers.

Emergency loans for small businesses: Employers who pledge not to lay anyone off can get government loans to help make payroll—and if they keep that promise for the duration of the crisis, they won't have to repay the loan.

Money to shore up the health-care system: \$100 billion for hospitals and health systems, and billions more for testing supplies, protective equipment for health care workers, and construction of more space to house patients.

\$500 billion to bail out larger companies: To be doled out at the administration's discretion, but with immediate reporting of who receives it, an inspector general to watch over the process, and a ban on any of the money going to businesses owned by senior government officials — excluding the Trump family.

VI. Conclusion.

In conclusion, landlords and businesses are being forced to accept an incredible burden at this stressful and critical time. Los Angeles County has not granted extensions to pay real property taxes on April 10, 2020, even though many commercial and residential landlords are not receiving rent (or only receiving reduced rent). We are here to assist you with these matters. We believe that many lenders and Los Angeles County would extend payments dates and deadlines if approached with a well-prepared request with backup documentation. Moreover, we are well versed in contract defenses of force majeure, impossibility, impracticability and frustration of purposes, which can be used as threats to negotiate extensions of payments with lenders or governmental entities. Finally, we are a full-service bankruptcy, creditors rights and workout firm and can assist you as a creditor or as a debtor, if the situation arises. If you should wish to discuss these matters or anything else related to the impact of COVID-19 on your life or your business, please feel free to reach out to us.