



MEMORANDUM

April 20, 2020

ATTORNEY-CLIENT PRIVILEGE; ATTORNEY WORK PRODUCT

TO: COMMERCIAL BROKERS ASSOCIATION

FROM: HUNTER JEFFERS

RE: State of Washington and City of Seattle Limitations on Commercial Tenancies

STATE OF WASHINGTON

Effective April 16, 2020, Landlords are prohibited from increasing or threatening to increase rent or the amount of any deposit for commercial tenants materially impacted by COVID-19, whether because the tenant is personally impacted and unable to work or because the tenant was not deemed essential pursuant to Governor Inslee's previous proclamations. The Governor's proclamations also contain the following restrictions that we believe apply only to residential landlords. We will update CBA members promptly following any additional guidance from the Governor.

- No serving, enforcing or threatening notices requiring residents to vacate a dwelling, unless the owner or property manager attaches an affidavit attesting that the action is necessary to respond to a significant and immediate risk to the health or safety of others created by the resident.
- No enforcing or threatening to enforce judicial eviction orders by owners, property managers, or law enforcement, unless the owner or property manager attaches an affidavit attesting that the action is necessary to respond to a significant and immediate risk to the health or safety of others created by the resident.
- No assessing or threatening to assess late fees or other charges for non-payment or late payment of rent that occurred on or after February 29, 2020.
- No assessing or threatening to assess rent or other charges when a resident's access or occupancy was prevented as a result of COVID-19.
- No treating unpaid rent or any other amounts due on or after February 29, 2020, as enforceable debts or obligations that are owing and collectable.
- No increasing or threatening to increase rent or the amount of any deposit for residential dwellings.

CITY OF SEATTLE

Seattle Landlords are Prohibited From Evicting Small Businesses and Nonprofits.

Until at least May 16, 2020, Seattle Landlords are prohibited from evicting “small businesses” for non-payment of rent or because the tenant’s lease expired. For purposes of this limitation, “small business” means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and has fifty or fewer employees.

Seattle Landlords are Prohibited From Increasing Rent During this Civil Emergency.

Seattle Landlords are prohibited from increasing rent on nonprofits and small businesses during the lease term, unless the increase was authorized in a written lease in effect before the ordinance. In addition, Landlords cannot renew a lease or enter into a new lease if rent due under the new lease exceeds rent due under the expired lease.

These restrictions do not apply to month-to-month tenancies.

These restrictions only apply to small businesses and nonprofits.

The definition of “small business” under this proclamation is different than Seattle Mayor Jenny Durkan’s earlier proclamation prohibiting commercial evictions. Here, “small business” means any business entity that meets all of the following requirements:

1. Owned and operated independently from all other businesses (a franchisee with five or fewer franchise units shall be considered owned and operated independently from its franchisor);
2. Has fifty or fewer employees per establishment or premises;
3. Has either: been forced to close due to an emergency order issued by the Governor or Mayor; or has gross receipts from the previous calendar month of 2020 that are less than 70 percent of its gross receipts for the same month in 2019; and
4. Is neither: a general sales and service business with ten or more establishments in operation located anywhere in the world; nor an entertainment use business with five or more establishments in operation located anywhere in the world.

A “nonprofit” is any “not for profit corporation” or “nonprofit corporation” under RCW 24.03.005(16) or “public benefit not for profit corporation” or “public benefit nonprofit corporation” under RCW 24.03.490 that holds tax-exempt status under 26 U.S.C. § 501(c)(3).

Tenants Can Pay Rent in Installments and Landlords Cannot Charge Interest or Late Fees for 1 Year.

Nonprofits and small businesses that fail to pay rent during or within six months after the civil emergency declared by the Mayor may instead pay rent in installments on a payment schedule.

Tenants must pay past-due rent within one year of the Mayor declaring the civil emergency over, and Landlords cannot accrue or impose late fees, interest, or any other charges for deferred rent during that time.

Finally, unless the Tenant agrees otherwise, Tenants are not required to pay more than 1/3 of the late rent “within any month or period following the month or period for which full rent was not paid.”

Once again, these restrictions only apply to small businesses and nonprofits, as those terms were defined in the context of the Mayor’s prohibition on increasing rent.

For triple-net (NNN) leases, are tenants still required to pay operating expenses when due?

Probably not. The bill allows a tenant to pay “rent” in installments, and most commercial triple-net leases (including the CBA triple-net leases) define rent to include operating costs.