



Commercial Lease Negotiation Tactics for Small Business Owners

Presented by:

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Welcome!

- This workshop is specific to San Francisco. If you are from another city, please see LCCR's events' calendar for an Oakland or San Jose specific workshop

Disclaimer

- No legal advice – just information
- Commercial lease consultations available, and we'll talk about how to sign up before the end of the presentation

Agenda

1. First steps before negotiating with your landlord.
2. Understand relevant protections in San Francisco.
3. Tips for negotiating with your landlord.
4. Questions.

First Steps – Review your lease

- Don't forget the exhibits / appendices.
- If you sublet from someone, review the master lease and your sublease.
- Leased your space for multiple lease terms? Review the original lease and all extension documents.
- What if I don't have a lease?

First Steps – Review your lease

- Keep an eye out for:
 - common-area and other shared expenses. (CAM fees, denoted as additional rent)
 - abatement and other rights.
 - Rent may be reduced if you can't access the building, or
 - if the landlord cuts off services (*e.g.*, utilities, sanitation, janitorial, etc.)
 - Be on the lookout for provisions guaranteeing that the landlord won't be liable for disruptions

First Steps – Review your lease

- Keep an eye out for:
 - *Force majeure* clauses that don't require you, the tenant, to keep paying rent.
 - Provisions that state that the leased property can only be used for certain purposes (hair salon, restaurant), the violation of which could be argued is frustration of purpose (an affirmative defense).
 - Provisions that guarantee the tenant's right to access or use the premises.

First Steps – Review your lease

- Condemnation/casualty provisions if drafted to cover a loss of access or use due to governmental action.
- For buildings with multiple commercial spaces, like a food court or shopping mall, there may be lease clauses that require the landlord to maintain a certain level of occupancy or certain stores in operation.
- Failure to meet these occupancy/operation requirements can trigger rights in favor of tenants.

First Steps – Review your lease

- Quiet enjoyment rights.
- Security deposits can go towards repayment of back rent in a rent repayment plan.

First Steps – Notify your landlord

- Try to keep an open dialog.
- Continue to answer Landlord's proposals stating why they are or are not feasible. If Landlord asks for accountings and bank statements, don't feel pressured to give it to them. Instead, you might show them a quick books accounting of gains and losses. Also you may assert that it is irrelevant whether you have received government assistance, as you are not asking of the Landlord what government assistance it has received.

First Steps – Save everything

- Make and keep copies of all written and other correspondence:
 - Hard-copy notices, letters
 - E-mails
 - Text messages
 - Voicemails

Questions so far?

San Francisco Board Ordinance

Moratorium protection extends through September 30, 2021

- For rent missed from March 17, 2020 to Sept. 30, 2021 for businesses that are:
 - Financially impacted by the COVID-19 crisis,
 - Registered to do business in San Francisco, and
 - Have gross receipts at or below \$25 million for 2019

San Francisco's Commercial Eviction Moratorium

- Rent missed through September 30, 2021 would be due when the forbearance period ends (see slide 19, below), or the landlord could initiate a lawsuit (subject to any agreement with your landlord).
- Landlord can agree to additional extensions, in his/her discretion.

Protection extends through September 30, 2021

- Applies to qualified commercial tenants, subtenants, and month-to-month or holdover tenants.
- “Rent” includes monthly rent, additional rent, security deposits, late fees, and interest. If outstanding rent is still owed at the end of the moratorium or forbearance period, interest can accrue.

Protection extends through September 30, 2021

- Claiming protection under the moratorium:
 - Provide written communication to your landlord, monthly.
 - Financial statements or a letter from an accountant are not required.
 - Discuss payment terms with your landlord monthly.
- You must do this each month to qualify!

Protection currently extends through September 30, 2021

- You are not required to pay all your rent during the moratorium, but are encouraged to pay what you can.
- Your landlord can agree to additional extensions, in his/her discretion.
- Prohibits the landlord from modifying existing leases after March 17, 2020.

Protection currently extends through September 30, 2021

Dec. 2020 Board of Supervisors Commercial Eviction Protections Ordinance (“Dec. 2020 Board Ordinance”)

- Creates four tiers of tenants
 - Tier 1: 10 or fewer full time employees (FTE), two years to repay deferred rent, option to terminate by giving landlord 30 days’ notice and pay all rent due through termination date.
 - Tier 2: 10–24 FTEs, up to 18 months to repay deferred rent.
 - Tier 3: 25–49 FTEs, up to 12 months to repay deferred rent.
 - Tier 4: 50+ FTEs, must pay deferred rent when moratorium period expires.

Protection extends through September 30, 2021

Dec. 2020 Board Ordinance

- Landlords can't assess penalties/fees in connection with the termination of the Tier 1 tenant's lease prior to Sept. 30, 2021.
- Landlords and tenants can negotiate / enter into agreements on terms different from those provided by the Ordinance. If parties can't agree, the Ordinance controls.

- Your landlord cannot evict you for missing payments while you are working with him/her during the period of the moratorium! Work with your landlord to come up with a written repayment plan (template provided in follow up email).
- If you still have not paid all outstanding rent after the agreed-upon repayment period or after the moratorium protections/forbearance period expires, your landlord can then commence proceedings to evict you for non-payment of rent.

Questions so far?

Negotiating with your landlord

Negotiating with your landlord

First step – get your landlord to come to the table and negotiate

Negotiating with your landlord

Make an ask that is realistic for you

- Avoid setting yourself up for failure.
- Avoid repeated re-negotiations.

Negotiating with your landlord

Don't be afraid to ask for the moon

- Abatement for duration of pandemic.
- Extended deferrals beyond the moratoria / rent reductions.
- Extended repayment period for missed rent during shutdowns.

Negotiating with your landlord

Don't be afraid to ask for the moon

- Convert back rent into a loan, payable over a fixed term.
- Credit deposit toward back rent + delay in requirement to repay.
- Forgiveness of back rent owed (possibly with promise to pay full rent moving forward).

Negotiating with your landlord

Don't be afraid to ask for the moon

- If your lease term is about to end, consider leveraging a lease extension for a reduction or forgiveness of back rent.
- Ask if your landlord is receiving any mortgage assistance or is aware of it.

Negotiating with your landlord

Don't over commit

- Repayment tied to percentage of monthly revenue vs. set monthly amount.
- Ask to convert base rent to percentage rent.

Negotiating with your landlord

Don't compromise your sanity

- If your landlord is threatening you or being verbally abusive, communicate only much as needed to meet moratorium requirements.

Negotiating with your landlord

Don't compromise your sanity

- The moratorium protects tenants from eviction for nonpayment of rent.
- Some landlords are nevertheless trying to sidestep the moratorium by claiming breach of contract and other alleged violations.

What's Comes Next?

Reopening in SF continues – California “fully reopened” as of June 15, 2021

- Removes nearly all local COVID-19 related restrictions, with some narrow exceptions for mega events.
- Health order changes include the elimination of local capacity limits as well as local requirements for physical distancing, masking, and operational procedures and protocols in almost all instances.

What's Comes Next?

- Gov. Newsom's June 11, 2021 Executive Order extended cities' ability to extend their eviction moratoria through September 30, 2021. It is unclear whether we will see further extensions.
- Viability of defenses to nonpayment of rent remains to be seen.

What's Comes Next?

- Court decisions on business interruption insurance coverage have been generally unfavorable, but will depend on each policy's definition of a “qualified business interruption.”
- Courts in which business owners have seen some success are being appealed.

What's Comes Next?

- Continue to research community financial resources and keep an eye out for new ones.
- Programs that are currently closed may receive additional funding and reopen.
- Visit <https://oewd.org/businesses-impacted-covid-19>

Loans & Grants : last updated 7/8/21

| | <u>SF SMALL BUSINESS RECOVERY LOAN FUND</u> | <u>CA REBUILDING FUND</u> | <u>EIDL</u> |
|-----------------------------|--|--|---|
| Maximum amount | \$100,000 | \$100,000 | \$2M |
| Interest Rate | 0% | Fixed (4.25% as of 12/15/20) | 3.75% for businesses 2.75% for nonprofits |
| Collateral required? | No | No | No for loans under \$200k |
| First Payment Due | Deferred 1 year | After 1st month | Deferred 1 year |
| Forgivable? | No | No | No, except for up to \$10k loan advance |
| Approved Uses | Flexible but uses must be detailed to CDFI | Working capital, inventory, marketing, operating expenses, rent, utilities, property taxes, supplies, etc. | Payroll, fixed debts, accounts payable, and other bills |
| Apply | <u>PRE-APPLICATION</u> | <u>PRE-APPLICATION</u> | <u>APPLY</u> |
| Nonprofits eligible? | No | No | Yes |

Loans

Interested in a low-interest federal SBA Disaster Loan up to \$2M?

The **Economic Injury Disaster Loan (EIDL)** is the federal SBA's disaster loan. It offers SF businesses, nonprofits, certain self-employed, sole proprietors, and independent contractors loans up to \$2M with interest rates of 3.75% (2.75% for nonprofits). Loans may be used to pay fixed debts, payroll, accounts payable and other bills. No personal guarantee required for loans \$200,000 and under. On December 27, 2020, new funds were added to the EIDL Advance Grant program. SBA has resumed processing applications on a first-come, first-served basis.

EIDL Eligibility

- ☀️ Suffered substantial economic impact
- ☀️ Business and nonprofits with fewer than 500 employees
- ☀️ Certain self-employed, sole proprietors, and independent contractors are eligible
- ☀️ You do not need to prove you cannot get credit elsewhere

Apply

- ☀️ The SBA is accepting new applications. **NOTE:** You can check your status by [logging into your account](#).
- ☀️ [Apply online](#).

Are you waiting to hear back about your EIDL loan?

The [SBA Express Bridge Loan](#) allows small businesses that currently have an existing business relationship with an SBA Express Lender to access up to \$25,000 with less paperwork. If you have an urgent need for cash while waiting for a decision and disbursement on an EIDL loan, contact your business' bank to see if you qualify

HOW TO HELP YOUR EMPLOYEES

Have you been impacted by COVID-19 or the Shelter in Place order and continued to pay your workers?

You can get an [Employee Retention Tax Credit](#) up to \$14,000 per employee. The top of the Employee Retention Tax Credit webpage contains links to the latest guidance, although some information on the webpage may be outdated. If you have 100 or fewer full-time employees, you may claim a credit for wages paid to all of your employees. If you have more than 100 employees, you may claim a credit for those furloughed or whose hours have been reduced as a result of closure or economic hardship. **NOTE:** **Businesses that received a PPP loan are eligible to claim this credit.**

Funding Resources

- Other grant and loan programs: <https://oewd.org/grant-and-loan-programs>
- PPP application now closed.
- Independent restaurant coalition: <https://www.saverestaurants.com> - application closed but lobbying for more funding.

Legal Resources

- Additional assistance through the Lawyer's Committee for Civil Rights of the SF Bay Area (<https://lccrsf.org/>).
- Apply to LCCRSF's Legal Services for Entrepreneurs Program for a one-hour remote consultation or longer-term negotiation assistance related to your lease situation:
 - <https://tinyurl.com/LSEApplication>



Questions?