

HOW LANDLORDS WOULD NEGOTIATE LEASE TERMS UNDER SB-939 **THE BILL ITSELF DOES NOT PROVIDE GUIDANCE ON HOW LANDLORDS SHOULD** **RENEGOTIATE LEASE TERMS.**

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California SB 939—a new bill that will provide protections for commercial tenants impacted by the pandemic—has passed the Senate Judiciary Committee and will go for a vote in the Committee on Appropriations later this month. The bill has been highly controversial, in that it will place a moratorium on commercial evictions and allow commercial tenants to open new negotiations on lease terms or terminate existing leases. However, the bill itself does not provide guidance on how landlords should renegotiate lease terms.

“SB-939 does not provide any guidance as to how landlords and tenants should renegotiate rent and other economic lease terms,” **Jonathan Zweig of Cox, Castle & Nicholson**, tells GlobeSt.com. “Once a tenant is eligible under Section 1951.10, it can attempt to renegotiate by engaging in ‘good faith negotiations.’ However, this is a subjective standard that may provide a means for abuse, as tenants can engage in a renegotiation without any intent to continue the lease, and then terminate with minimal liability.”

Until now, landlords have largely and willingly entered into lease negotiations with tenants to work through the economic fallout related to the pandemic. Most already have deferral plans in place. “I have found that landlords have been eager to help tenants through this unprecedented period and are willingly negotiating rent deferral plans with all sorts of tenants, ranging from national companies to mom-and-pop stores,” says Zweig. “In my experience, these arrangements carefully balance the needs of both parties and typically include two to three months of base rent deferral—but not common area operating expenses, taxes or insurance—that is paid back in 12 monthly installments beginning on a specified date, usually in early 2021.”

Many of these plans have already been negotiated and covered the needs of both tenants and landlords. “These deferral plans are able to balance the interests of helping the tenant through

the ongoing pandemic while ensuring that the landlord's cash-flow needs to meet ongoing obligations are more urgently addressed," adds Zweig.

For landlords with existing deferral plans in place, the new bill should not undo those plans, unless the tenants' circumstances have changed. "SB-939 ought not to entitle certain tenants to negotiate a lease modification unless such modification is absolutely necessary to support the tenant's ongoing operations," says Zweig. "Otherwise, the tenant may be able to receive a windfall to the detriment of the landlord."

When handling these negotiations, Zweig recommends that both parties' positions should be considered. "Accordingly, a mechanism to consider the relative positions of both parties, including the landlord's ability to make ongoing debt service and other property maintenance payments, and other consideration the landlord may have already granted to the tenant, such as an improvement allowance, would ensure a fairer process and outcome for tenants and landlords," he adds.