

THE PRESIDENT'S MESSAGE

This just in! SF owners and renters may see cash relief; State to administer pay-outs

By Noni Richen, SPOSF/SPOFI President

Federal Legislation governing rent assistance presented states with three options: State Rental Assistance Program, the Block Grant Option, or having part of the state allocation distributed through local jurisdictions. California chose to run the program in smaller jurisdictions, but offered larger jurisdictions the ability to elect to run their own programs. San Francisco opted to directly administer half the funds allocated for the City and County, with the remainder administered directly by the State. Therefore, San Franciscans could apply either to the State, or locally. But the locally-administered component of the program has provided relief for both owners and renters at a glacial pace. After discussions with State authorities, San Francisco opted to transfer its rent relief program to a Block Grant Option, which essentially means that State will run the San Francisco program.

Talk of "wave of evictions" overblown

Despite the talk of a "wave of evictions," we don't want to throw renters out. The ones who *do* need to pack their bags ASAP are those who have continued to draw their incomes, but flat out refuse to pay for their housing or cooperate with owners. There seems to be much, probably deserved, sympathy for other small businesses, cafés, and boutiques, that have suffered. But somehow, residential rental property owners do not garner that type of consideration. What if those struggling restaurants were forced to go on serving meals to customers who refused to pay but who were allowed to bring their friends in for a free meal also—for as long as they cared to continue dining? In fact,

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The coming wave of tenant bankruptcies

By Julie Rome-Banks, Esq., Partner, Binder & Malter LLP, Santa Clara

If you've never had a tenant declare bankruptcy, this article is for you. Even if you had a tenant declare bankruptcy in the past, this article is for you also.

Since March, 2020, when the State of California declared a state of emergency due to the COVID-19 pandemic, counties and cities around the State have been enacting and extending ordinances to give small businesses and residential tenants protection from evictions.

These ordinances have had two significant effects. First, the rate of new bankruptcy case filings dropped significantly in 2020 and 2021. The reason

“Any bankruptcy attorney will tell you that once the eviction moratoriums are lifted, a tidal wave of bankruptcy cases by residential tenants is expected to be filed.”

that this has occurred is because of the second effect, namely that residential tenants have been accruing large amounts of unpaid rental charges every month, and landlords have been unable to evict tenants except in rare circumstances involving public health and safety. Renters have been protected

from evictions even though most are not paying any rent or are paying reduced rent well below the contracted rate. Although some limited rental relief is available, at least one recent article in the *San Francisco Chronicle* suggests that only 10% of the \$900 million of funds allocated to the Bay Area by the U.S. Treasury Department has actually been paid out to local residents in need of rent relief due to the COVID-19 pandemic.

Educating yourself about bankruptcy

Any bankruptcy attorney will tell you that once the eviction moratoria are lifted, a tidal wave of bankruptcy cases by residential tenants is expected to be filed. It's helpful for a landlord to understand what bankruptcy offers to renters who aren't able to pay rent, and how bankruptcy affects the rights of the landlord.

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Cont'd from page 1: **THE PRESIDENT'S MESSAGE**

Supervisor Dean Preston recently introduced legislation that would force certain commercial owners to "eat" the unpaid rent of their tenants.

Extortionist buyouts scare away investors

We recently were treated to breathless news reports of an owner being effectively extorted into paying a \$475,000 bounty to regain possession of an apartment occupied by people who had already received discounted rent for years due to San Francisco's draconian rent control laws. The final insult came when the tenant lawyer referred dismissively to the owner's huge payout as "chump change." This sort of attitude is part of the reason for our perennial shortage of rentals, because most people who pay this extortion will never invest in rentals in San Francisco again.

Thank you to members who have joined me in supporting the CalRHA lawsuit against certain state rent moratoria. The most important intent of the lawsuit is to prevent further assaults on our small businesses. Please consider making a donation, if you haven't already done so. Donation information can be found on page 4.

Well, it appears we were all too optimistic about meeting in person this month. We would love to see you again and have live legal panels, live speakers, and most importantly, our live audience of SPOSFI members. We've learned our lesson; no predictions on live meetings this time. Please stay healthy and stay tuned! Hope to see you all soon at a live meeting! 🏠

Cont'd from page 1: **TENANT BANKRUPTCIES**

Many renters will consider filing bankruptcy if they have unpaid debts in excess of \$20,000 and aren't able to propose a repayment plan for their outstanding rents to their landlord. Debtors may owe

“There is no requirement that a tenant of any income level first seek rental relief with the landlord or apply for any public assistance funds before filing for bankruptcy protection.”

any or all of the following: rent arrears, credit card payments, vehicle loans, medical bills, and more. Although it is certainly possible to file bankruptcy with less debt, bankruptcy has a negative impact on an individual's credit rating for up to ten years. Most individuals therefore consider bankruptcy only as a last resort if they cannot

work out their financial difficulties with their creditors. There is no requirement that a tenant of any income level first seek rental relief with the landlord or apply for any public assistance funds before filing for bankruptcy protection.

Chapter 7 bankruptcy

The goal of any bankruptcy case is to give the debtor/tenant a fresh start. In **Chapter 7**, the most common type of bankruptcy filed by individuals, a debtor can eliminate or "discharge" personal debts of any dollar value. All debts that are listed in the bankruptcy petition documents will be discharged. A Chapter 7 case starts by filing a voluntary bankruptcy petition in the federal Bankruptcy Court. An attorney is not required for an individual to file for bankruptcy protection, although more than 90% of individual Chapter 7 cases are filed by an attorney who helps the debtor navigate the requirements of the bankruptcy system successfully. The remaining cases are filed by individuals without the help of an attorney (known as a pro se bankruptcy case). The result for creditors is generally the same.

First, as soon as the bankruptcy case is filed, an **automatic stay** is created. The automatic stay happens instantly when the bankruptcy petition is filed.

“Think of the automatic stay as an injunction issued by a federal judge mandating that all creditors must stop their collection activity.”

Think of the automatic stay as an injunction issued by a federal judge mandating that all creditors must stop their collection activity. The debtor does not have to ask the federal judge to issue an automatic stay in most cases.

All creditors must immediately cease all actions to enforce their legal rights, including stopping any unlawful detainer case and stopping 3-day or 30-day

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CALIFORNIA RENTAL HOUSING ASSOCIATION

notices as soon as the landlord is informed of the bankruptcy filing. A landlord can be ordered to pay a significant penalty by the Bankruptcy Court if s/he continues any action to evict a tenant after learning of a bankruptcy case. A tenant only needs to tell the landlord orally that s/he has filed bankruptcy to put the landlord at risk of violating the automatic stay.

A Chapter 7 case takes about four months, after which the debtor receives a "discharge," mean-

"[In a Chapter 7 bankruptcy] a few assets are completely protected regardless of value, including 401k and IRA accounts."

ing the Bankruptcy Court enters an order that all monetary claims of the tenant that existed on the bankruptcy petition filing date are legally wiped out forever. In most cases the

debtor gets to keep her personal property, subject to certain valuation limits. A few assets are completely protected regardless of their value, including 401k and IRA accounts. A Chapter 7 bankruptcy trustee will be appointed by the court in every Chapter 7 case. The job of the Chapter 7 bankruptcy trustee is to review the assets and determine if any value can legally be realized for the benefit of creditors. The discharge order gives the tenant a clean slate. All rental arrears that are owed as of the date of bankruptcy are discharged and can never be collected by the landlord.

Chapter 13 bankruptcy

Another type of bankruptcy that a tenant may file is a Chapter 13. A Chapter 13 bankruptcy is a mini-reorganization for an individual that has regular income and is able to repay at least a portion of its debt back over 3-5 years. Chapter 13 is less frequently used by tenants. The filing of a Chapter 13 also instantly creates an automatic stay. But in contrast to a Chapter

"... landlords have unique protections under the Bankruptcy Code—if they know how to enforce them."

7, a Chapter 13 bankruptcy case usually is pending for several years instead of just a few months. The tenant may choose to continue to be a tenant or

may choose to vacate the premises and start renting elsewhere. The rights of the landlord are affected by that choice by the tenant.

Although this process may sound unfair to creditors, landlords have unique protections under the Bankruptcy Code—if they know how to enforce them. Unless possession is returned voluntarily, a lease must still be performed by the tenant after s/he files bankruptcy. For example, in Chapter 7 and Chapter 13, if bankruptcy is filed on the 20th of the month, the rent that becomes due and owing on the 1st of the next month must be paid by the tenant.

If not, the landlord can petition the bankruptcy court to terminate the automatic stay for purposes of recovering possession. Although the landlord will not be able to take any action to recover pre-bankruptcy unpaid rent, the landlord may be able to

"... if the tenant in a chapter 13 case wants to continue to remain a tenant, s/he must remain current on all future rents and must agree to repay all outstanding rents to the landlord in six months or less."

ask the Bankruptcy Court for permission to pursue an unlawful detainer to recover possession if the tenant continues to fail to pay rent. Not every motion to terminate the automatic stay is granted and in most cases the Bankruptcy Court will not consider a motion to terminate the automatic stay unless 14 days' notice of the motion has been

given to the debtor, the attorney for the debtor (if there is one), and the appointed bankruptcy trustee.

Although the eviction moratorium may give a tenant 18 months or more to repay rent arrears, the Bankruptcy Code may compel a different result. For example, if the tenant in a Chapter 13 case wants to continue to remain a tenant, s/he must remain current on all future rents and must agree to repay all outstanding rents to the landlord in six months or less. The landlord gets paid faster in a Chapter 13 case than the other creditors but only if the debtor wants to continue to remain a tenant. This is known as "assuming the lease." This is another one of the unique protections provided to landlords under the Bankruptcy Code. Because the Bankruptcy Code is federal law, it takes precedence where it conflicts with state or local laws. Provided the tenant makes the payments required under a Chapter 13 plan, the tenant also receives a discharge of all debts at the end of the Chapter 13 plan.

A final note: bankruptcy law is complicated, and most attorneys who have experience in California's eviction laws are not experienced in dealing with bankruptcy. Engaging an attorney who is experienced in bankruptcy law is critical to protecting your rights as a landlord and not running afoul of the automatic stay. ⚖️

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