



# CALIFORNIA BUSINESS PROPERTIES ASSOCIATION

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March 14, 2019

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The Honorable Hanna-Beth Jackson  
Chair, Senate Judiciary Committee  
California State Assembly  
State Capitol  
Sacramento, CA 95691

**RE: SB 939 (Weiner) Abrogates Commercial Real Estate Leases - OPPOSE**

Dear Chairperson Jackson:

California Business Properties Association opposes SB 939 (Weiner) a bill that would allow one party to unilaterally abrogate real estate leasing contracts. While we agree with the author that COVID-19 economic impacts have been severe, we worry that the short-term solution of forcing property owners to provide free space for an extended period of time will have terrible long-term consequences including the delay of economic recovery, loss of jobs in the commercial real estate sector, and increased loan defaults, and lawsuits.

We believe there are better ways to approach this issue that are already in motion. Both Senate and Assembly leadership have recently acknowledged that the state has an important role to play in helping both tenants and property owners recover from the economic impacts of this pandemic.

The California Commercial Real Estate industry has been actively working to respond to and mitigate the spread of Coronavirus since it was first recognized as a potential public health risk. The industry has supported efforts by the State of California and local governments to manage this unprecedented emergency, including the Governor's eviction moratorium executive order.

Aside from reduction in revenue during the crisis, property owners will see increased expenses when the state re-opens due to new obligations for cleaning, security, managing people coming into and out of buildings and in common areas, and potentially even health screenings; all while seeing reduced revenues from rents. Enclosed is a guidance document for retail space that we have prepared – you will note the amount of increased staff and expenses it will take to operate safely once the state re-opens. In many instances those responsibilities will fall to the building owner/manager.

SB 939 should attempt to provide direct assistance to those impacted by this global crisis and not expect one type of private sector business to stand in as the state's the safety net.

Recognizing that we are in unprecedented times, we agree that tenants who have been impacted by the COVID-19 virus need assistance. Although SB 939 is a well-intentioned effort to provide that assistance the bill does not adequately acknowledge or balance extensive protections already in place under existing state orders, judicial court rules, existing laws, federal, state, and local financial assistance, or the economic incentives building owners have to work with tenants to develop solutions and keep them in place.

We believe that SB 939 violates Article I, Section 10 of the U. S. Constitution, which states in relevant part that “No state shall. . . pass any . . . Law impairing the Obligation of Contracts.” This is known as the Contracts Clause. It was included as one of the few limitations on state power inserted directly into the Constitution, to preclude states from abridging contractual rights between private parties. The founders believed that the state’s interference in private contracts was “contrary to the first principles of the social compact, and to every principle of sound legislation.” (The Federalist No. 44 (Madison)).

As with any Constitutional right, there are limits. The classic example is that Freedom of Speech does not give a person the right to cry “Fire” in a crowded theater. The limits of the Contracts Clause were defined in the seminal case of Home Building & Loan Association v. Blaisdell, 290 U. S. 398 (1934). Although the case is almost a hundred years old, its two-part test is still used today.

In Blaisdell, Minnesota passed a Mortgage Moratorium Law that gave borrowers an extended time period in which to pay back their debts to lenders to ameliorate the effects of the Great Depression. It required a borrower seeking such relief to prove in court the necessity so that the Court could set the reasonable time for the extension under the specific circumstances and so that the Court could set and order that payments be made each month in amounts reasonable, just, and equitable to lender, or the moratorium would be of no further effect.

In addition, all interest would continue to accrue, preserving for the lender the benefit of his bargain so any delayed, unpaid amounts would not cause detriment to the lender. With these limitations and restrictions, the U.S. Supreme Court ruled that because the impact to the lender was temporary, equitable consideration was being given to the lender, and the lender’s rights were being preserved and not seriously undermined, this specific law did not cause a substantial impairment and was a permissible exercise of police power in an emergency situation.

While some people may consider looking to Sveen v. Melin, 138 S. Ct. 1815 (2018), that case is not appropriate because it concluded that no rights were substantially impaired because the law in question was working to effectuate the contract holder’s rights and expectations, not working against them. This legislation, like Blaisdell, is postponing rights to the detriment of one party to a contract, but unlike Blaisdell, the timing is not short, the impact is severe, and the rights of the landlord are completely ignored.

SB 939 purports to eliminate contract rights and/or substantially impair them without any consideration given to the landlord’s rights. Proposed Section 1 delays the payment of rent by all commercial tenants in the State of California for over a year and makes it impossible to collect those rents for another one to two years thereafter by requiring landlords to file regular civil suits for recovery of those funds, pushing payment out two to three years, if ever.

Proposed Section 2 of SB 939 gives tenants the right to terminate contracts at their sole option and guarantees with minimal payment with no consideration given to equity or the landlord’s reasonable expectations under their contracts. There is no possible way, in our opinion, that such a law could pass constitutional muster. It is exactly the sort of legislation that is directly prohibited by the Constitution, since the forgiveness of debts to creditors by the government is exactly why the Contracts Clause was included in the body of the Constitution.

The second major issue is the vagueness of SB 939. The defined timing is unreasonable because the state of emergency may extend far past specific impacts to the commercial tenants this legislation purports to assist. There is no definition of eviction nor any understanding given as to which of the many steps involved in an unlawful detainer constitute violations under this bill.

SB 939 provides no defined limitations on the size of the business, with the first part giving no standards and the second part saying small without defining the term and there are no meaningful standards requiring COVID-19 impacts. Section 1 has no provisions for showing COVID-19 impacts at all and the definition in Part 2 is so broad that all restaurant and entertainment tenants qualify.

SB 939 broadly restricts all evictions of commercial tenants regardless of the reason and gives lease rights to persons who would not otherwise have them, but disallowing landlords with properties under month to month leases from giving notices, even though the tenants are still allowed to do so, disallowing landlords from evicting where the lease has already expired and the landlord is already under contract to a new tenant, disallowing landlords from evicting for serious covenant breaches that do not rise to the level of “threat” and stopping even actions already in progress because of the absolute bar on the issuance and service of a Writ of Possession to get the space back.

SB 939 could cause a financial collapse. All commercial tenants will be allowed and encouraged to stop paying rent and to wait to pay that rent, if ever, for years. This postponement of rents will cause landlords to seek Proposition 8 reductions on their taxes as the values of their properties fall below their factored base year values, will cause landlord’s financials to crumble and lead to lenders putting out cash calls to lower loan balance and foreclose when landlords cannot pay, and cripple landlords’ abilities to keep their properties open and maintained as they become unable to pay property managers, who are paid out of rental revenues, utilities, services and insurance. It will even be impossible for landlords to comply with the provision requiring every landlord to give a notice to every tenant in the state without exorbitant costs and without violating Shelter in Place orders.

In California, we have over 6 billion square feet of private commercial real estate. This includes companies of all sizes from a single person that owns one building, to some of the largest multi-national real estate companies – and everything in between. Commercial real estate encompasses everything from small offices, grocery stores, large and small retailers and shopping centers, to manufacturing plants and distribution centers.

Our industry has an urgent interest in working with tenants and the public sector to assure our industry and jobs it provides, can be part of our state’s recovery. The premise of SB 939 seems to be that our industry is looking for excuses to remove tenants – nothing can be further from the truth. Our industry exists to serve tenants and we thrive when our buildings and malls have thriving restaurants, office, retailers, and manufacturers therein.

To that end, we have called on local governments to coordinate and provide as close to a uniform response as possible in implementing a statewide response to this pandemic. We are willing partners in the recovery who seek clear, consistent, and fair policies across the state that will provide the least amount of disruption for tenants and building owners alike. These amendments, if put into SB 939 will do the opposite, as they pit private business groups against one-another instead of calling on the State and California and/or the Federal Government to fulfill its implied promise to help those businesses that have willingly complied with the strategies to combat COVID-19, at their own great expense.

SB 939 could be a positive opportunity to look at ways to mitigate economic impacts of the pandemic for impacted businesses and on property owners who also have significant financial obligations to employees (janitors, landscapers, operational engineers, etc.), service providers (environmental and energy services), contractors (tenant/building improvements), compliance with regulatory and statutory mandates (e.g. GHG

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mitigation through energy efficiency), and to financial lenders, with ways to enable fiscal stability in the short-run.

SB 939 should look toward these types of positive solutions such as deferral of parcel and property taxes to assure liquidity, encouragement of companies to take advantage of state and federal assistance programs to meet contractual obligations, enable the use of business interruption and other types of insurance, and identify gaps in coverage for companies and provide direct state support, and veer away from the harmful nature of the current language..

Established in 1972, CBPA serves as the legislative and regulatory advocate for property owners, tenants, developers, retailers, contractors, land use and leasing attorneys, commercial brokers, and other professionals in the commercial, industrial, and retail real estate industry.

With over 10,000 members, CBPA is the designated legislative advocate in California for the International Council of Shopping Centers (ICSC), the California Chapters of the Commercial Real Estate Development Association (NAIOP), the Building Owners and Managers Association of California (BOMA), the Retail Industry Leaders Association (RILA), the Institute of Real Estate Management (IREM), and the Association of Commercial Real Estate – Northern and Southern California (ACRE), the National Association of Real Estate Investment Trusts (Nareit), and AIR Commercial Real Estate Association (AIR CRE).

For the above reasons, we must OPPOSE SB 939 (Weiner).

Thank you for taking our views into consideration.

Sincerely,



Matthew Hargrove  
Sr. VP Government Relations

cc: Vice Chair Borgeas and All Members, Senate Judiciary Committee  
Senator Wiener  
Senator Gonzalez