



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

UTAH CHAPTER

April 9, 2020

The Honorable Gary R. Herbert
350 North State Street, Suite 200
Salt Lake City, Utah 84114-2220

Re: Avoiding Commercial Landlord/Tenant Restrictions on Evictions and Mandated Rent Deferment for Tenants Impacted by COVID-19

Dear Governor Herbert,

On behalf of our members, we are reaching out to you to **advocate against** any further executive orders restricting tenant evictions or otherwise mandating rent deferment for tenants. By way of background, NAIOP Utah's membership and board members include some of the largest commercial and multi-family real estate developers, owners and investors of office, industrial, retail, multi-family and mixed-use properties.

Background

We are grateful for your leadership and decisive action to date to confront the challenges facing the State of Utah in light of the COVID-19 pandemic. We would like to clarify why any further executive orders restricting tenant evictions or otherwise mandating rent deferment for tenants is unwarranted, and any benefits conferred by such executive orders would be outweighed by the ensuing serious economic harm.

Discouraging Economically Detrimental Opportunistic Behavior

As you might expect, many of our neighboring states (e.g., California and Nevada) that have enacted broad executive orders restricting tenant evictions and mandating rent deferment have experienced economically detrimental opportunistic behavior by tenants. Even those tenants that are ready, willing and able to pay rent have claimed an inability to pay due to the COVID-19 pandemic, putting landlords in financially precarious positions with their lenders.

Many of these properties have been financed with CMBS loans, pension fund loans or other loans from financial institutions. As a result of the tenants not paying rent (notwithstanding their ability to pay), many landlords have been required to default on their loans without any certainty of being able to successfully navigate loan workouts. The cascading effects of these loan defaults have the potential to trigger the failure of financial institutions, reduce pension payouts to teachers and other retirees, and cause broad negative effects in the securities markets where CMBS loans are traded.

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The landlord/tenant environment is driven by relationships, and landlords have an interest in preserving these long-standing relationships and tenancies. Accordingly, we **advocate for** landlords and tenants working together through private negotiations to custom-tailor rent relief depending on the needs of the individual tenant.

Potential Recommendations

As part of this process, NAIOP Utah would be supportive of any executive order that strongly urges (rather than mandates) that landlords and tenants work together to find constructive solutions. Part of these recommendations could include:

1. Landlords working to accommodate tenant requests for rent relief;
2. Tenants sharing financial data with their landlords that supports their rent relief requests;
3. Tenants pursuing forgivable loans under the federal Coronavirus Aid, Relief and Economic Security Act (CARES Act); and
4. Tenants applying for a Small Business Administration low interest federal disaster rate loans to help overcome the temporary loss of revenue they are experiencing from the effects of the COVID-19 pandemic.

This approach would be consistent with Utah's longstanding attitude of avoiding interference with private contracts and encouraging cooperation and accommodation. Additionally, this approach will result in more impactful and positive arrangements between landlords and tenants, and will result in the Utah economy returning to full capacity more quickly after the COVID-19 pandemic subsides.

If you have any questions, please don't hesitate to contact one of us. Thank you for your support.

Sincerely,

Vinnie Figlioli, NAIOP Utah President
Brian Cheney, NAIOP Utah President-Elect
Jeff Rasmussen, NAIOP Utah Public Affairs Chair
AJ Pepper, NAIOP Utah Public Affairs Co-Chair