



July 23, 2020

The Honorable David Chiu
 California State Assembly
 State Capitol, Room 4112
 Sacramento, CA 95814

SUBJECT: AB 1436 (CHIU) – TENANCY: RENTAL PAYMENT DEFAULT: STATE OF EMERGENCY: COVID-19 OPPOSE – AS AMENDED JULY 2, 2020

Dear Assembly Member Chiu:

The California Chamber of Commerce and the organizations listed respectfully **OPPOSE** your **AB 1436**, as amended on July 2. This bill forces rental property owners to forgo collecting rent for the entire duration of the state of emergency or until April 1, 2021 (whichever comes first) and then prohibits owners from collecting on the unpaid rents for *an additional 12 months*. The economic hardships stemming from COVID-19 impact everyone, *including* rental property owners. Shifting the financial calamity caused by state-imposed shutdowns onto rental property owners, with no financial help from the state, merely moves California from one crisis to another. Although we understand the health concerns that led to the shutdown, the resulting economic fallout cannot be remedied simply by shifting the burden on to rental property owners to absorb. **AB 1436** would result in widespread foreclosures, tighten credit assessments for borrowers, depress housing construction and lead to job losses across California.

WILL RESULT IN FORECLOSURES BY FORCING ALL RENTAL PROPERTY OWNERS TO FORGO RENT FOR AN UNREASONABLE AMOUNT OF TIME WITH NO FINANCIAL HELP

Rental property owners have operating costs, employees, mortgage payments, property taxes and the legal obligations to maintain the habitability of their property. They rely on rent to meet these and other financial obligations. Notably, **AB 1436** *does not* address any of the costs rental property owners are responsible for nor considers the unintended consequences of allowing tenants to simply withhold rent for an extended period of time. Instead, the bill would force rental property owners to forego collecting unpaid rent for the entire duration of the COVID-19 state of emergency, or at least until April 1, 2021, *plus an additional 12 months*. **AB 1436** would therefore require rental property owners to provide free housing for an unreasonably long time, preclude them from being able to

collect any unpaid rent for another 12 months, and then expect landlords to be able to collect months and months of back rent from tenants. In short, rental property owners will be required to meet all of their mortgage, payroll, maintenance and property tax obligations and absorb months and months of no rent from their tenants.

By denying rental property owners their ability to collect rent, and without addressing the cost obligations of rental property owners, the bill will inevitably increase foreclosures across California. Foreclosures will place additional strains on banks, lenders, and the larger housing market - which will not help home buyers or California's economic recovery.

HURTS HOUSING AND JOB RECOVERY BY DISCONTINUING LENDING, INVESTMENT AND RESIDENTIAL CONSTRUCTION

As the number of COVID-19 cases rises in California, particularly during the recent second wave of cases, lenders have become wary of the increased risk of continuing to offer the same product portfolio in this changing economic climate. Many are mitigating risks by temporarily modifying interest rates and other loan terms to protect themselves as the economy struggles and unemployment rises. This means that it is becoming harder and more expensive to borrow capital.

As market forces push lenders to be more conservative, lending is already starting to slow. **AB 1436** will exacerbate this trend. Rational lenders will not risk their capital in California's real estate market if said investment is statutorily guaranteed to yield no returns for the foreseeable future, which is exactly what this bill will do. Additionally, residential housing developers will look to other markets outside of California if bills like **AB 1436** ensure there will be no returns on those investments.

Without that capital investment or desire to build more residential units, construction will slow, subduing not only housing production, but also depress the tens of thousands of construction jobs with it. It will also hurt first-time home buyers and minority communities already disproportionately impacted by COVID-19 and who are already more likely to be on the edge of lenders' qualifying guidelines. At a time when California is reeling from an existing housing crisis and an economy struggling to rebound from months of being shut down, with potentially more shutdowns on the horizon, the state must avoid driving away critical investment in California housing and the well-paying jobs that come with it.

UNCONSTITUTIONALLY IMPAIRS CONTRACTS

AB 1436 runs afoul of both federal and California Constitutional prohibitions against laws impairing the obligation of contracts. The bill unreasonably destroys lease agreements and will put one sector of the economy under undue financial hardship. U.S. Const., art. I, § 10, cl. 1; Cal. Const., art. I, § 9. The constitutional prohibition against contract impairment demands that contracts be enforced according to their "just and reasonable purport." *Teachers' Retirement Bd. v. Genest*, 154 Cal.App.4th 1012, 1026-1027 (2007). Private contracts, including rental agreements, are not subject to unlimited modification under the state's police powers. *U.S. Tr. Co. of New York v. New Jersey*, 431 U.S. 1, 22, 97 S. Ct. 1505, 1517, 52 L. Ed. 2d 92 (1977). While the state can impair a private contract if there is a compelling state interest, it must be reasonable. *Id.* ("Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption.")

Here, **AB 1436** unreasonably impairs the rights and responsibilities of contracting parties by forcing rental property owners to absorb no rent with no financial assistance from the state, and then

prohibits them from trying to collect any of that unpaid rent for another 12 months after that. The public purpose of protecting renters is not justified by a policy forcing rental property owners into foreclosure. Moreover, by depressing investments in the construction of more housing units in California, the bill exacerbates the housing crisis and already high rents compared to national averages.

AB 1436 also raises constitutional concerns under the takings clauses of the California and federal constitutions. The takings clauses, broadly speaking, prohibit the taking of private property without compensation. Whether rental property owners will ever be able to recover that unpaid rent is a real concern.

INADEQUATE REQUIREMENTS THAT TENANTS SHOW THEY ARE UNABLE TO PAY RENT

Even under the most recent amendments, **AB 1436** still fails to adequately address concerns that tenants might withhold rent even if they can afford to pay all of the rent. The latest amendments only require a tenant to submit a letter stating that they cannot pay rent because COVID-19 has either impacted their income or raised other expenses. Notably, while landlords under the bill cannot seek to collect back rent unless they submit a verified complaint under penalty of perjury, tenants need only need to submit a letter not under the penalty of perjury protections. In sum, the bill prioritizes every other financial obligation except rent owed to rental property owners. Even if a tenant could pay part of the rent, the bill provides tenants a legal right to pay none of it.

UNCLEAR IF APPLICABLE TO COMMERCIAL PROPERTIES AND UNCLEAR RESOLUTION OF MORATORIUM

From the plain language of **AB 1436**, it is not clear that the provisions would apply only to residential rental property owners. It is our understanding from discussions with the Authors' offices that the intent of the bill is to apply to residential rental units only. The bill needs to make that expressly clear in the intent language and elsewhere.

Finally, **AB 1436** fails to clarify how its moratorium will end. As presently drafted, the bill would result in all rental payments being due upon the expiration of the state of emergency or the date certain in the bill, plus another 12 additional months. If that is the case, it is almost certain that a wave of foreclosures and/or unlawful detainers will result at that point in the future, as renters struggle to gather funds to pay back many months of back rent while continuing to meet existing financial obligations. Any attempt to statutorily erase that obligation would certainly multiply the constitutional concerns regarding takings and contractual obligations raised above and intensify foreclosures and other issues noted. **AB 1436** essentially builds a ticking timebomb into California's housing and lending market that will ultimately hurt the very renters it aims to protect and do substantial damage to California's housing market in the process.

CONCLUSION

The COVID-19 pandemic and the actions taken to address the public health crisis have wreaked havoc to California's economy. Shutting down non-essential businesses and forcing residents to shelter-in-place have bankrupted Californians and businesses across the state. While we appreciate the health concerns that led to these actions, the California Legislature cannot rely upon the private sector to serve as both the state's tax base and economic safety net for COVID-19. **AB 1436** effectively attempts to do just that by forcing rental property owners to forgo rent and serve as the safety net for millions of Californians - without doing anything to address owners' own costs,

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including mortgages, maintenance, and property taxes. To the contrary - only the state has the resources to function as that safety net to guarantee the health and welfare of its citizens. **AB 1436** would result in widespread foreclosures, make it harder for folks to secure loans, depress housing construction and lead to job losses across California.

For these reasons, we respectfully **OPPOSE** your **AB 1436**.

Sincerely,



Adam Regele, Policy Advocate
California Chamber of Commerce

On behalf of the following organizations:

Brea Chamber of Commerce, *Heidi L. Gallegos*
Carlsbad Chamber of Commerce, *Bret Schanzenbach*
Folsom Chamber of Commerce, *Jim Lofgren*
Gilroy Chamber of Commerce, *Mark Turner*
Greater Coachella Valley Chamber of Commerce, *Patrick Swarthout*
Hesperia Chamber of Commerce, *Shannon Shannon*
Long Beach Area Chamber of Commerce, *Christine Bos*
Los Angeles Chamber of Commerce, *Patricia Torres Bruno*
Murrieta/Wildomar Chamber of Commerce, *Patrick Ellis*
North Orange County Chamber of Commerce, *Theresa Harvey*
Oceanside Chamber of Commerce, *Scott Ashton*
Oxnard Chamber of Commerce, *Nancy Lindholm*
Pleasanton Chamber of Commerce, *Steve Van Dorn*
Rancho Cordova Chamber of Commerce, *Diann H. Rogers*
San Gabriel Valley Economic Partnership, *Brad Jensen*
Santa Rosa Metro Chamber, *Ananda Sweet*
Southwest California Legislative Council, *Gene Wunderlich*
The Silicon Valley Organization, *Eddie Truong*
Torrance Area Chamber of Commerce, *Donna Duperron*
Victor Valley Chamber of Commerce, *Mark Creffield*

cc: Ronda Paschal, Office of the Governor

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