



## JUDICIAL COUNCIL OF CALIFORNIA

### GOVERNMENTAL AFFAIRS

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TANI G. CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

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*Administrative Director*

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*Director, Governmental Affairs*

April 29, 2021

Hon. Mark Stone, Chair  
Assembly Judiciary Committee  
State Capitol, Room 3146  
Sacramento, California 95814

Subject: Assembly Bill 255 (Muratsuchi), as amended April 19, 2021 – Concerns  
Hearing: Assembly Judiciary Committee – May 4, 2021

Dear Assembly Member Stone:

The Judicial Council has not taken a position on AB 255, but we would like to raise with you some concerns we have identified with the bill. We have communicated these concerns to Assembly Member Muratsuchi, and we want to share them with the Committee.

AB 255 seeks to provide rental protections to small commercial tenants that have been adversely impacted by the COVID-19 pandemic. The Judicial Council takes no position on this policy, as rental protection for commercial tenants is a policy decision for the Legislature and outside the council's purview. Nevertheless, there are a number of issues with the bill that the council believes will impede access to justice, negatively impact any cases arising from this bill once they make it to court, and consume judicial resources.

Initially, AB 255 creates a separate rental and unlawful detainer protection framework for commercial tenants that is not only separate from existing pandemic-related rental and unlawful detainer protections for residential tenants (AB 3088 (Chiu) Stats. 2020, ch. 37 and SB 91 (Com. On Budget and Fiscal Review) Stats. 2021, ch. 2), but it is also procedurally different. AB 255 borrows some similar provisions from AB 3088/SB 91, but then alters them. For example, AB 3088/SB 91 identifies a "covered time period" of March 1, 2020 to June 30, 2021 within which a tenant cannot be found guilty of an unlawful detainer. In contrast, AB 255 identifies a "qualifying time period" of March 1, 2020 to August 1, 2020. The terminology is slightly different, and the time period is slightly different, and it is unclear why.

Additionally, AB 3088/SB 91 protects a residential tenant from eviction if they pay at least 25 percent of their unpaid rental debt at any point during the covered time period. In contrast, AB 255 protects a commercial tenant from eviction if the commercial tenant has paid at least 25 percent of rent due during the qualifying time period, but it does not specify by what date the 25 percent of rent needs to be paid. In other words, if at any moment during the qualifying time period the commercial tenant has not paid 25 percent of their rent, the landlord could begin unlawful detainer proceedings.

In general, complicated statutory schemes with few self-executing provisions take extra review time for judicial officers and act as a barrier for self-represented litigants. As much as a statute can be simplified and its provisions can be made self-executing, the easier it will be for self-represented litigants to utilize the statute's provisions. AB 255 contains a number of open-ended provisions that lack clarity, which will likely create an access barrier for self-represented parties and require extra time for judicial officers reviewing any cases generated by this bill. For example:

- New Civil Code section 1952.9(a)(2) defines “commercial tenant” with a number of factors including that the person or entity “operates an independently owned and operated business or nonprofit organization that is **not dominant in its field of operation** and has its principal office in the state.” (emphasis added) It is unclear what it means for a business to not be “dominant in its field of operation,” which will likely create confusion in any cases brought under AB 255.
- New Civil Code section 1952.9(b) requires the landlord and tenant to engage in a “good faith negotiation” and finds a landlord is in compliance if the landlord is unable to consent to a payment plan “without subjecting the landlord to significant risk of default on their own financial obligations.” These are both subjective standards, open to significant interpretation.
- New Civil Code section 1952.9(d) states that this “section does not prohibit the termination or amendment of a lease for reasons other than a failure to pay a COVID-19 lease debt for the reasons described in paragraph (1) of subdivision (a) or for reasons other than a failure to pay a COVID-19 lease debt.” The “reasons described in paragraph (1) of subdivision (a)” refer back to the definition of “certificate of hardship,” so it is unclear how a definition can be a “reason” under this section.

We appreciate the opportunity to share these concerns with you, and we are happy to continue to provide technical assistance on AB 255.

Hon. Mark Stone

April 29, 2021

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Should you have any questions or require additional information, please contact Kate Nitta at 916-323-3121.

Sincerely,

*Sent May 3, 2021*

Cory T. Jaspersen

Director, Governmental Affairs

CTJ/KN/jh

cc: Members, Assembly Judiciary Committee  
Hon. Al Muratsuchi, Assembly Member, 66<sup>th</sup> District  
Mr. Jith Meganathan, Staff Counsel, Assembly Judiciary Committee  
Mr. Daryl Thomas, Consultant, Assembly Republican Office of Policy  
Ms. Jessica Devencenzi, Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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April 28, 2021

Hon. Al Muratsuchi  
Member of the Assembly  
State Capitol, Room 2179  
Sacramento, California 95814

Subject: Assembly Bill 255 (Muratsuchi), as amended April 19, 2021 – Concerns

Dear Assembly Member Muratsuchi:

The Judicial Council has not taken a position on AB 255, but we would like to raise with you concerns hawse have identified with the bill. We appreciate the time your staff has spent speaking with our staff, but, as the bill moves forward, we want to highlight several issues of concern.

AB 255 seeks to provide rental protections to small commercial tenants that have been adversely impacted by the COVID-19 pandemic. The Judicial Council takes no position on this policy, as rental protection for commercial tenants is a policy decision for the Legislature and outside the council's purview. Nevertheless, there are a number of issues with the bill that the council believes will impede access to justice, negatively impact any cases arising from this bill once they make it to court, and consume judicial resources.

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We appreciate the opportunity to share these concerns with you, and we are happy to continue to provide technical assistance on AB 255.

Hon. Al Muratsuchi

April 28, 2021

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Sincerely,

*Sent April 29, 2021*

Kate Nitta  
Attorney, Governmental Affairs

KN/jh

cc: Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California