

COVID-19 ISSUES FACING LANDLORDS & TENANTS

PRESENTATION BY



IN COLLABORATION WITH



PLEASE NOTE:

ALL PARTICIPANTS HAVE BEEN MUTED
PLEASE USE THE CHATBOT FEATURE TO ADD QUESTIONS OR COMMENTS

OUR MODERATOR IS NOW CONDUCTING A SOUNDCHECK TO
MAKE SURE ALL PARTICIPANTS CAN HEAR THE AUDIO

IF YOU ARE NOT HEARING THE MODERATOR'S ANNOUNCEMENT,
YOU MAY NEED TO DIAL IN USING A TELEPHONE

HERE IS THE DIAL-IN NUMBER:

(408) 418-9388

ACCESS CODE 269 990 273

IF THE MAIN DIAL-IN NUMBER IS BUSY, YOU CAN TRY ONE OF THE
FOLLOWING NUMBERS, WITH THE ABOVE ACCESS CODE:

(617) 315-0704

(312) 535-8110

(469) 210-7159



COVID-19 ISSUES FACING LANDLORDS & TENANTS

TUESDAY, APRIL 14, 2020 • 9:00 - 10:00 a.m. CDT



KYLE BACON

JONES WALKER



ANDY ST. ROMAIN

JONES WALKER



DAVID KERTH

JONES WALKER



JIM KEATY

KEATY REAL ESTATE

COVID-19 Issues Facing Landlords & Tenants

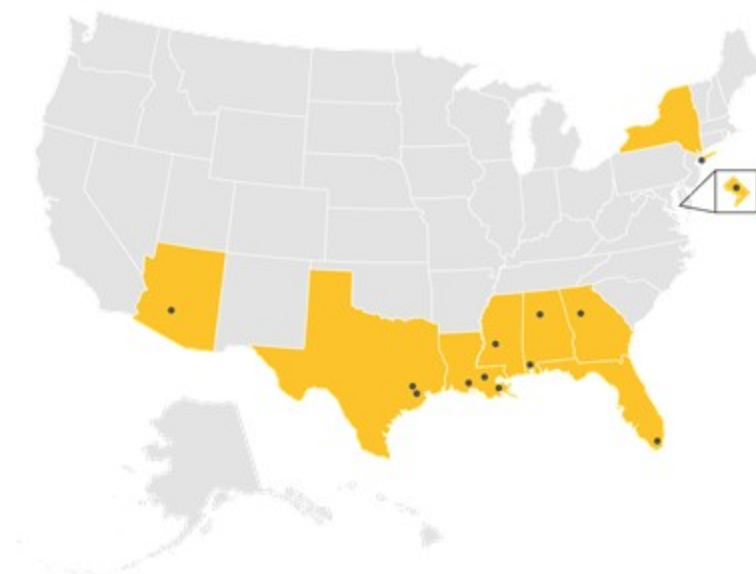
Kyle M. Bacon
Partner

Andy St. Romain
Partner

David M. Kerth
Partner

About Jones Walker

- Largest law firm based in Louisiana
- Jones Walker is among the 120 largest law firms in the United States
- **350+** – attorneys
- **13** – offices nationwide
- **34** – practices
- Real Estate team advises clients on matters ranging from simple sales and acquisitions to structuring all aspects of large-scale developments, including mixed-use developments, industrial projects, and public projects.



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The information described in this program is general in nature, and may not apply to your specific situation.

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Legal advice should be sought before taking action based on the information discussed.

Force Majeure & Impossibility of Performance

Kyle M. Bacon
Partner | Lafayette



Terminology

Force Majeure

- A contractual provision that excuses a party to a contract from performing all or part of an obligation because an event or circumstance that is beyond his control renders him unable to perform the obligation.

Impossibility of Performance

- A concept under the Louisiana Civil Code that excuses performance by an obligor due to a “fortuitous event that makes performance impossible.”

Applicability

These concepts apply to all types of real estate documents, including:

- Loan commitments, leases, property management agreements, construction contracts, development agreements, and purchase and sale agreements.

Focus today is leases.

Force Majeure

STEP #1: Review lease agreement to determine whether there is a force majeure provision in the lease agreement.

STEP #2: If there is a force majeure provision in the lease agreement, evaluate whether it applies to the specific situation.

STEP #3: If it is determined that the force majeure provision applies to the specific situation, send force majeure notice if required.

Does Force Majeure Provision Apply?

- Every provision is different.
- Fact-specific.
- Strictly construed.
- Example: “strikes, lock-outs, weather conditions, breakdown, accident, casualties, acts of God, labor troubles, delays in performance by contractors, inability to procure materials, inability by the exercise of reasonable diligence to obtain supplies, parts, employees or necessary services, failure of power, governmental laws, orders or regulations, actions of governmental authorities, riots, insurrection, war or other cause beyond the reasonable control of the parties.”
- May not cover pandemic, but may cover certain government-mandated closures depending on stated purpose of lease.
- In leases, there's usually a carve-out for rent payments.

Force Majeure Notice

- Some force majeure provisions require notice.
- Required timing of notice varies.
- Required method of notice varies.
- Failure to comply with notice provision can jeopardize ability to invoke force majeure provision.

Impossibility of Performance

La. Civ. Code art. 1873:

- **An obligor is not liable for his failure to perform when it is caused by a fortuitous event that makes performance impossible.**
- An obligor is, however, liable for his failure to perform when he has assumed the risk of such a fortuitous event.
- An obligor is liable also when the fortuitous event occurred after he has been put in default.
- An obligor is likewise liable when the fortuitous event that caused his failure to perform has been preceded by his fault, without which the failure would not have occurred.

Louisiana Civil Code Article 1875:

- **A fortuitous event** is one that, at the time the contract was made, could not have been reasonably foreseen.

Impossibility of Performance: Case law

West v. Cent. Louisiana Limousine Serv., Inc., 2003-373 (La. App. 3 Cir. 10/1/03), 856 So. 2d 203, 206:

“Louisiana Civil Code Article 1873 places a high standard on an obligor and calls for a common sense approach to alternatives which would satisfy its performance.”

Sabre Indus., Inc. v. Module X Sols., LLC, No. CV 15-2501, 2017 WL 4237919, at *3 (W.D. La. Sept. 22, 2017):

“Business down turns, economic impracticability, and strategic business decisions can be anticipated and, to some extent, controlled. Such commercial/business related events and circumstances are not acts of nature such as floods and hurricanes and are in no way synonymous with an “act of God.”

U.S. Bancorp Equipment Finance, Inc. v. Loews Exp. L.L. C. 2008 WL 108666, at *5 (E.D.La.2008):

“if performance is still possible in spite of the obstacle, the obligor must fulfill his obligation at any cost, whatever the sacrifice.... [Obligors] are supposed to apply the totality of their resources, even to face ruin if necessary, in order to honor their promises.”

Other Possibilities

- Casualty provision in lease agreement – usually requires physical damage.
- La. Civ. Code art. 2715:
 - If, without the fault of the lessee, the thing is partially destroyed, lost, or expropriated, or its **use is otherwise substantially impaired**, the lessee may, according to the circumstances of both parties, obtain a diminution of the rent or dissolution of the lease, whichever is more appropriate under the circumstances. If the lessor was at fault, the lessee may also demand damages.
 - If the impairment of the use of the leased thing was caused by circumstances external to the leased thing, the lessee is entitled to a dissolution of the lease, but is not entitled to diminution of the rent.

Remedies

IMPOSSIBILITY OF PERFORMANCE

Louisiana Civil Code Article 1876:

- When the **entire performance owed by one party has become impossible** because of a fortuitous event, the contract is dissolved.
- The other party may then recover any performance he has already rendered.

Louisiana Civil Code Article 1877:

- When a fortuitous event has made a party's performance **impossible in part**, the court may reduce the other party's counter performance proportionally, or, according to the circumstances, may declare the contract dissolved.

Louisiana Civil Code Article 1878:

- If a contract is dissolved because of a fortuitous event that occurred after an obligor has performed in part, the obligee is bound but only to the extent that he was enriched by the obligor's partial performance.

FORCE MAJEURE: Largely depends on terms of lease agreement.

BEST COURSE OF ACTION: Try to find amicable resolution.

Landlord/Tenant Conflicts

Andy St. Romain
Partner | Baton Rouge



David M. Kerth
Partner | Baton Rouge



Landlord/Tenant Conflicts

Rent Relief

Relevant Lease Terms

Rental Payments:

- Options to consider
- Impacts:
 - Guarantor
 - Lender
 - Other parties
- Written Agreements:
 - Lease amendments
 - SNDA
 - Estoppel Certificates

Landlord/Tenant Conflicts

Impacts and obligations

Adjustments to Operations:

- Percentage rent
 - Impact on sales
- Restaurant pivot to drive thru service
 - Restrictions
- Operating Requirements
 - Lease terms
 - Franchise agreements

Adjustments to Premises:

- Alterations
- Common area

Landlord/Tenant Conflicts

- News reports that the Governor banned evictions statewide is not entirely accurate.
- Section 5 (H) of the Governor's Proclamation issued on April 2, 2020, suspends deadlines in legal proceedings until April 30, 2020.
 - Specifically allows landlords to re-take possession if the tenant has abandoned the premises.
- Louisiana Supreme Court's order issued on April 6, 2020, (i) deems certain matters as emergency matters that can be handled in person, (ii) specifies that it does not prohibit civil matters from being handled by remote access, and (iii) states that evictions cannot be handled by remote access.

Landlord/Tenant Conflicts

What is the Effect?

- The practical effect is that evictions will not be heard until after the stay at home order is lifted, and courts resume normal operations.
- Timing of hearings will be determined on a court by court basis.

Contact Us

Website

www.joneswalker.com

Disaster Prep & Recovery Blog

<https://www.disasterprepandrecovery.com/>

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Q&A





COVID-19 IMPLICATIONS

TIPS FOR TENANTS & LANDLORDS

Prepared by Jim Keaty

ALWAYS 110%
KEATY
REAL ESTATE

TODAY'S DISCUSSION

OUTLINE OF TOPICS

Lafayette Market Update?
Landlord and Tenant realities.
Tenant Tips.
Landlord Tips.
Things to watch out for!
Questions?



Of Sales: Lafayette Parish

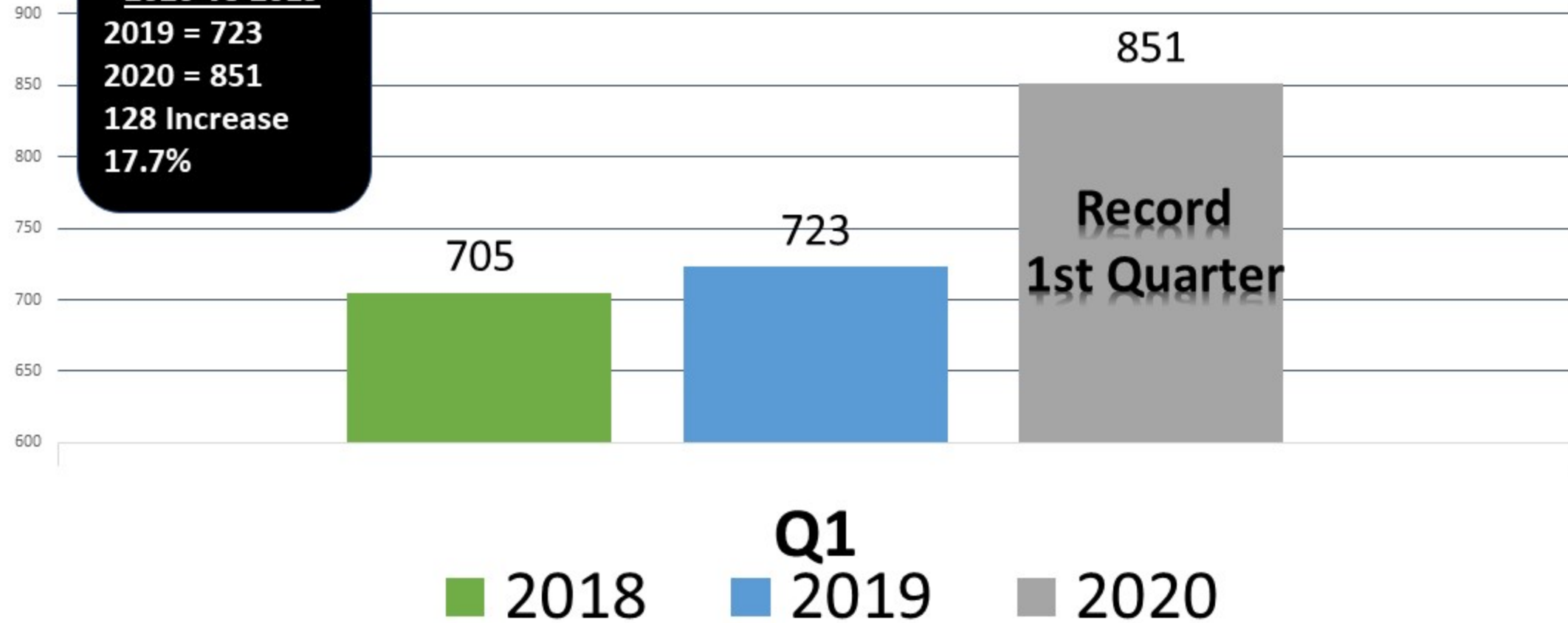
2020 VS 2019

2019 = 723

2020 = 851

128 Increase

17.7%



Volume Sold: Lafayette Parish

2020 vs 2019
\$36,849,303 More
23% More

\$155,685,930

\$158,617,575

\$195,466,878

**Record
1st Quarter**

Q1



2018



2019



2020

Average Sale Price

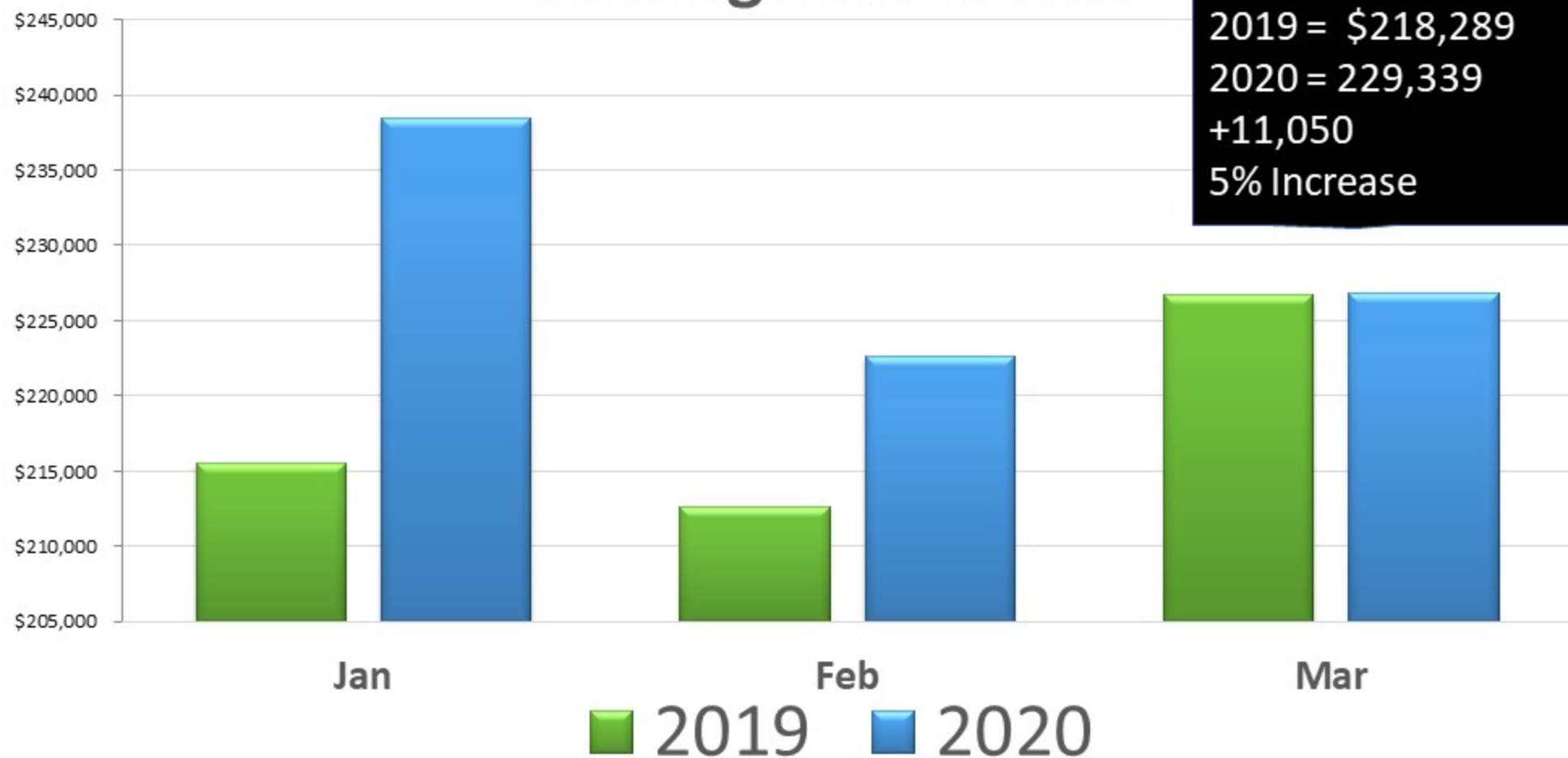
2020 vs 2019 YTD

2019 = \$218,289

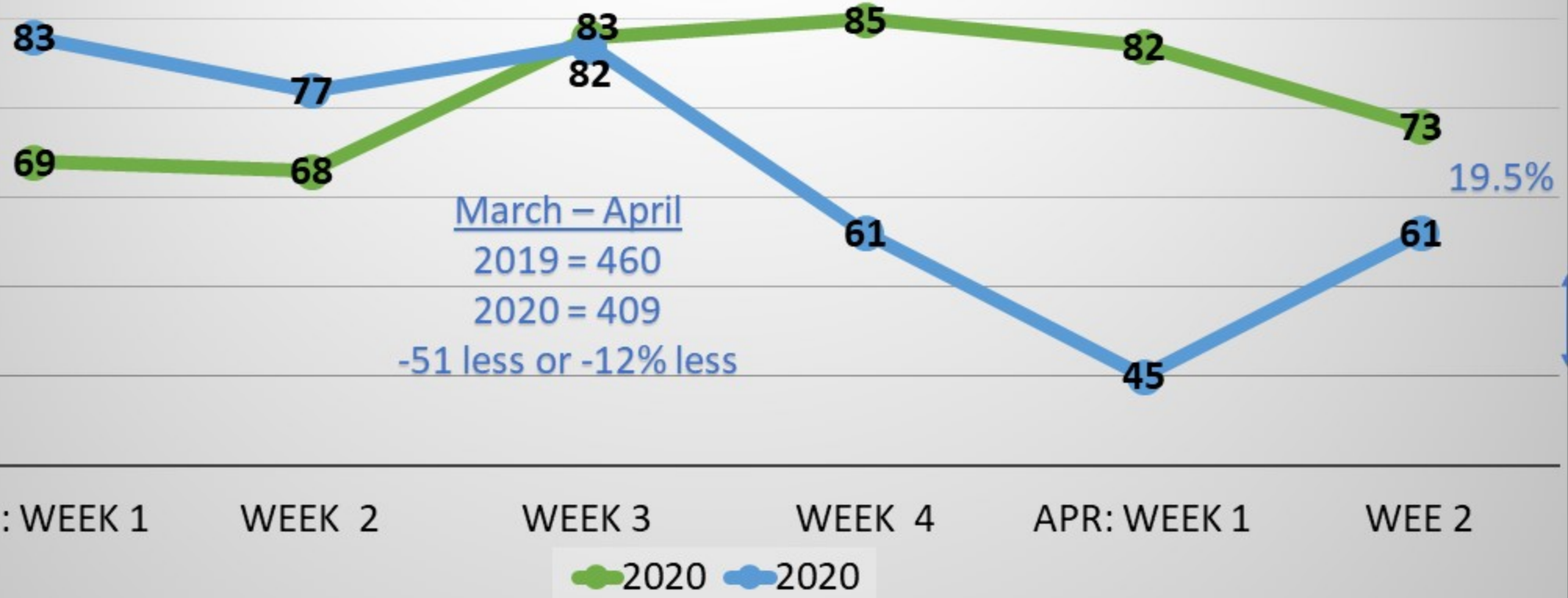
2020 = 229,339

+11,050

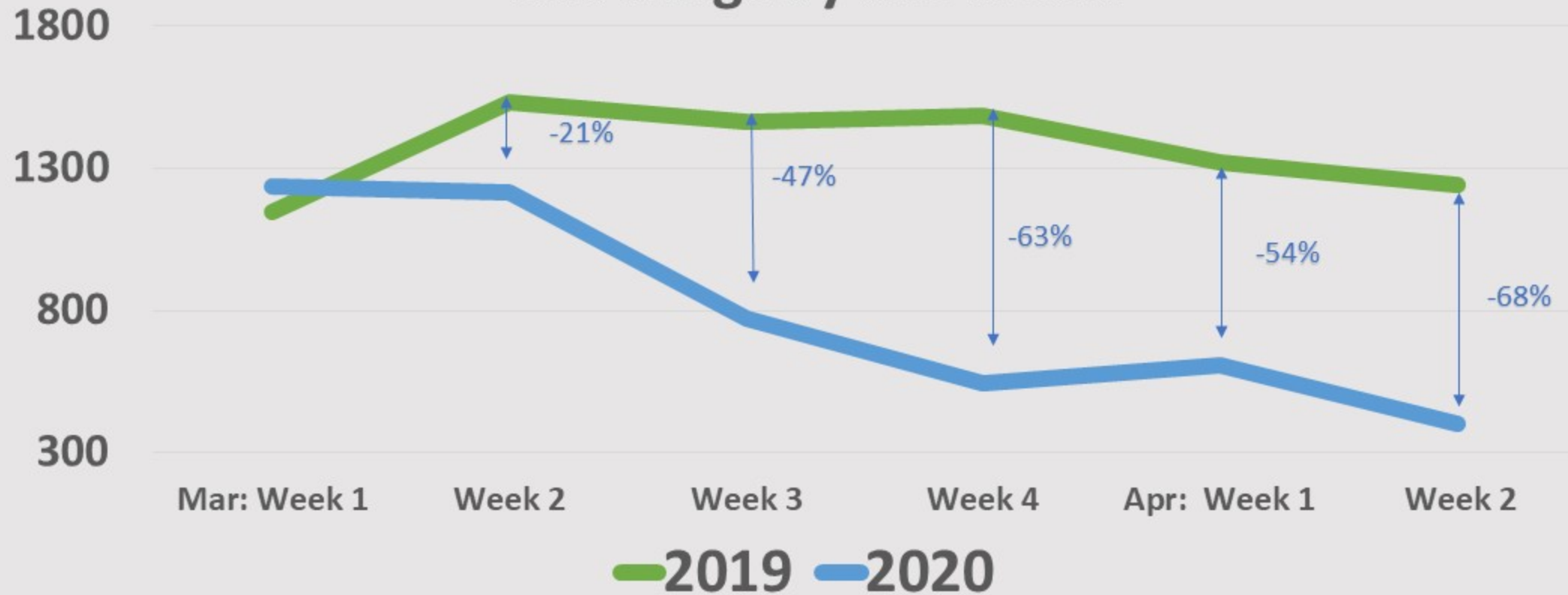
5% Increase



Lafayette Parish March Pendings



March - April Showings by the Week



Lafayette Parish New Listings 2018 - 2020



Total Inventory



Landlords & Renters VS COVID

RENTERS

31% of renters did not pay rent in April. That is up almost 20% from last month.
(According to National Multifamily Housing Council Report)



LANDLORDS

90-day Forbearance for Owners with federally backed loans: FHA, Fannie Mae, Freddie Mac.
(As long as they do not evict their tenants.)



RENTERS

120-day moratorium on evictions and late fees for renters who live in federally subsidized affordable housing.



LANDLORDS

The Federal Financing House Authority has directed Fannie Mae and Freddie Mac to suspend foreclosures and evictions for 60 days .



TENANT

5 TIPS TO GET YOUR THROUGH THIS CRISIS

TIP 1

Communicate with your Landlord!

TIP 2

Apply for government assistance:
Unemployment, SBA Economic
Injury Disaster Program Grant &
Loan.

TIP 3

Try to make a payment
with a credit card and pay
it back over time.

TIP 4

Ask your Landlord if you can make a
partial payment, add 2 to 3 months to
the back end of your lease, or apply
your deposit to a partial payment.
Work out a payment plan.

TIP 5

Ask your Landlord to
suspend late fees and
interest on unpaid rent.

LANDLORD

5 TIPS TO GET THROUGH THIS CRISIS:

TIP 1

Check with your lender to see if you have the option to skip a mortgage payment without penalty or pay interest only.

TIP 2

Apply for deferment or forbearance.

TIP 3

Apply for the SBA Economic Injury Disaster Loan (EIDL) program and the \$10K Grant.

TIP 4

Talk to your CPA about the carry back provision in the CARES ACT:
Tax benefit to carry back net operation losses against profitable years .

TIP 5

HELP your Tenants!!
Direct them to where they can get assistance. There are multiple programs available, but they need to apply. Helping your tenants could help you get rent!

Things to watch out for!

BE MINDFUL OF HIDDEN FEES

While many cities and states have halted evictions, there's nothing stopping landlords from tacking on costly late fees or from eventually evicting tenants who don't pay their rent for a few months in a row.

1

FRAUD & SCAMS

During uncertain times there are predators out there who will take advantage of the situation and scam desperate and honest people. If it's too good to be true, triple check.

2

COMMUNICATE

Over communicate with your tenant, landlord, bank, employer, employees, and CPA. Don't leave anyone in the dark.

3

ACCOUNTING

Be extra vigilant in your accounting for any money you received from the government. Keep everything separate and be sure you can easily defend where you used the money on eligible uses.

4

LET'S TALK!

HOW TO GET IN TOUCH

PHONE NUMBER

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EMAIL ADDRESS

jim@keatyrealestate.com

HEADQUARTERS

350 Doucet Rd. Lafayette LA 70503

ALWAYS 110%
KEATY
REAL ESTATE



Jim Keaty

QUESTIONS?

PLEASE ENTER YOUR QUESTIONS INTO THE CHATBOT

KYLE BACON OF JONES WALKER
WILL MODERATE THE Q&A

THANK YOU TO OUR PRESENTERS AND PARTICIPANTS!

IF YOU HAVE QUESTIONS THAT DID NOT GET
ANSWERED OR FEEDBACK ON TODAY'S SESSIONS,
PLEASE EMAIL **ANDRE@ONEACADIANA.ORG**

THE VIDEO AND SLIDES FROM TODAY'S WEBINARS WILL BE
POSTED SHORTLY AT **ONEACADIANA.ORG/COVID-19-RESOURCES**
AND SHARED BY OTHER WEBINAR PARTNER ORGANIZATIONS

WE WILL BE IN TOUCH ABOUT FUTURE WEBINAR OPPORTUNITIES