



NAVIGATING REQUESTS FOR RENT RELIEF – A LANDLORD'S GUIDE

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The COVID-19 pandemic is negatively impacting the ability of businesses to operate. As local and state officials all over the country have issued orders requiring residents to stay home and requiring "non-essential" businesses to close, landlords are beginning to receive an influx of requests for rent relief from tenants who are not able to occupy their premises or who, while still operating on a limited basis, have seen a significant decline in revenue. With our extensive experience in leasing matters, we have been advising our clients on how to preserve their landlord-tenant relationships while still ensuring that they are able to continue to receive rent or keep their business alive.

Many tenants are requesting partial or complete rent abatements, rent reductions or rent deferrals. Many of our owner clients are being proactive and reaching out to their tenants to help them work through the crisis. As a landlord, the best course of action is to attempt to negotiate a mutually satisfactory temporary arrangement if the tenant is unable to pay its full rent for a period of time. Exercising default remedies such as suing for damages or pursuing eviction actions, even if desired by landlords, may be impossible from a practical standpoint at this time as courts in many jurisdictions are closed or available only for emergency action. We also think that the courts will likely be reluctant to strictly enforce lease agreements in view of the crisis. The availability of force majeure provisions or other legal arguments that allow for the abatement or deferral of rent are certain to be used in any legal action to enforce a lease against a non-paying tenant. We previously wrote about force majeure provisions in commercial leases here: **[COVID-19 Related Legal Issues Impacting Commercial Leases](#)**.

In some situations, landlords are agreeing to abate rent (partially or fully) for a period of months in exchange for tenants extending the lease term, either by the early exercise of options or by

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negotiating early extensions. For some landlords, securing additional term is an acceptable trade for a few months of rent abatement.

In other situations, in lieu of abating or reducing the rent due under a lease, landlords are agreeing to defer all or a portion of the rent due for a period of time, with the agreement that the deferred amount will be paid back in full by the tenant over time. Depending on the circumstances, deferrals may be of base rent but not operating expenses or taxes. For example, a landlord may agree to forbear on collecting all or a portion of the April, May and June 2020 rent, with the agreement that the tenant will pay the deferred amount to the landlord in six (6) equal installments from July-December 2020 (together with the regular monthly rent installments due for those months).

Landlords' receptiveness to these arrangements depends on each tenant's specific circumstances; retail tenants in a shuttered mall, for example, who produce revenue only from actual sales in its store, are potentially in greater need of urgent rent relief than an office tenant that is still able to operate its business by requiring its employees to work from home. It is important for landlords to respond promptly in writing to each tenant's request for rent relief, and to then discuss with each tenant the factual basis for the request, with the goal of reaching a mutually acceptable arrangement.

Like any modification to a lease, any agreement to temporarily abate, reduce or defer rent must be memorialized in writing and signed by the parties. Landlords should ensure that their remedies for the non-payment of rent remain intact if the tenants later fail to repay the deferred amount or otherwise violate the terms of the agreement.

Correspondingly, building owners should be in contact with their lenders when a large tenant or multiple tenants are attempting to negotiate for rent relief as a result of COVID-19.

If you have any questions about your rights under your leases or the obligations to pay rent during this time, or if you need assistance negotiating or memorializing arrangements with one or more of your tenants or your landlord, please call us.