

# LANDLORD-TENANT SOLUTIONS DURING THE COVID-19 OUTBREAK

## KEY TAKEAWAYS

- **Tenants**  
Communicate with your landlord about what your business is experiencing and what assistance you'd like from the landlord.
- **Landlords**
  - (1) Check in with your tenants and see what you can do to help them;
  - (2) Check your loan documents to confirm what parameters you have to operate under; and
  - (3) Contact your lender about needed loan modifications.
- **Document any changes to your agreements with a third party**  
We've summarized some issues to consider for any loan modification below.

## INTRODUCTION

Over the past several weeks COVID-19 has transformed our communities, forcing necessary limitations on in-person interactions and threatening the financial wellbeing of families and businesses alike. On March 24, the State of Washington enacted a Stay Home, Stay Healthy Order, shutting down all business other than those deemed essential.

It is crucial that landlords and tenants communicate and collaborate to determine what modifications are needed to their leases to forgive certain obligations of tenants that cannot be fulfilled during the government-mandated closures. Finding an alternative lease payment structure that addresses the unique situations of both landlord and tenant can help alleviate some of the uncertainty this outbreak has caused and ultimately benefit both parties. Certain sectors, such as retail, were already having leasing difficulty before the COVID-19 outbreak, and there most likely will not be a line of tenants waiting to fill retail space once the dust settles.

## LEASE MODIFICATIONS

Here are some key discussion points for landlords and tenants to consider as they navigate this process:

- 1. Security Deposit.** Landlords could offer to apply the security deposit or any prepaid unapplied rent to April rent or to subsequent months' rent payments with the requirement that the deposit is replenished in the future.
- 2. Rent Modification.** There are a number of ways to provide rent relief to tenants, including rent forgiveness for all or a portion of the amount owed for a certain period of time, or rent deferral, with rent repaid over the remaining term of the lease or the additional months tacked on to the end of the lease.
- 3. Operating Expenses.** Landlords will have bills to pay in connection with their property, regardless of whether businesses are open, including payments of property taxes, utilities, insurance and common area maintenance. Landlords may want to consider requiring tenants to continue to pay their share of operating expenses even if base rent is not paid. Even residential properties offering rent relief to tenants might want to consider requesting that tenants make a minimum payment in order to help pay for utilities.
- 4. Percentage Rent.** For retail tenants that remain open, one option is to have the tenant pay rent equal to a certain percentage of sales, even if the lease does not provide for percentage rent. This may be useful for restaurant/food service tenants that have had to reduce or eliminate service or close for all but takeout and delivery.
- 5. Operating Covenants.** Some commercial leases require that tenants maintain certain hours of operation. Tenants forced to close due to government mandate will be in breach of these provisions. Some leases may contain *force majeure* clauses that excuse a party from fulfilling its obligations under the lease due to unforeseeable events outside of the parties' control. Not all leases contain *force majeure* clauses, and often *force majeure* does not apply to payments of money. In addition, some retail leases have co-tenancy requirements that landlords may not be able to meet if certain tenants are forced to close, so landlords may also be able to claim *force majeure* to excuse those obligations.
- 6. Financial Statements.** Landlords should consider requesting that tenants provide monthly financial information for the tenant and any guarantor during the term of any rent relief. For residential tenants, landlords could require documentation of the financial hardship, such as a letter from an employer or evidence that the tenant has applied for unemployment.

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**7. Confidentiality.** Landlords may want to consider requiring that the provisions of any lease modification be kept confidential so that it is not shared with other tenants.

**8. Loan Covenants.** It is essential that landlords review their loan documents to ensure that loan covenants are not being breached - some loans require lender approval to modify rents or other lease terms. In those instances, landlords will need to confirm any proposed changes with the lender. In addition, landlords should consider the impact that rent concessions and/or failure by tenants to pay rent will have on their cash flow and ability to make debt payments. Landlords might want to consider requesting a forbearance on their loan payments. For example, the Federal Housing Finance Agency recently announced an offer of mortgage forbearance to multifamily housing property owners who suspend evictions for those who have been financially impacted by this public health emergency, but they have not yet provided guidance on how the program will work.

**9. Document the Agreement.** It is imperative that landlords and tenants document the modifications that are agreed on to confirm their mutual agreement to the modified terms in order to make them binding and avoid future misunderstandings between the parties.

## BE CREATIVE

Some landlords are offering discounts to tenants that pay rent in April, while some are helping with creative ways to market and raise visibility for commercial tenants that do remain open and are operating under limited circumstances. Landlords could also help provide information to tenants about the assistance being offered by various government agencies.

## INSURANCE CLAIMS

While most business interruption policies do not cover closure due to pandemic, the landscape is changing daily, so any business that is suffering losses should document those in the event that there may be insurance coverage for those losses.

## PROPERTY OPERATIONS

Landlords may need to put new cleaning and other safety protocols in place at their properties. Here are some links to real estate industry groups have compiled resources on this topic:

- [Retail - Epidemic Crisis Best Practices - ICSC](#)
- [Multifamily - Coronavirus Preparedness for Apartment Firms - NMHC](#)
- [How to Prepare Your Tenants and Buildings for Coronavirus - BOMA International](#)

## RELATED HCMP RESOURCES

Effects of the COVID-19 Emergency on Leases in Washington

[Web version](#) | [Print version](#)

Impact of COVID-19 on Restaurants and Bars

[Web version](#) | [Print version](#)

Families First Coronavirus Response Act

[Web version](#) | [Print version](#)

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These are the opinions of the author, not HCMP. Statements here do not represent specific legal advice. Contact the appropriate lawyers at HCMP if we can be of legal assistance.

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Please do not hesitate to reach out to us with questions, and we hope that this memorandum will be of help in your business pursuits in Washington.

Best regards,



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