

COMMERCIAL LEASES DURING COVID-19

Tips : How to negotiate lease modifications with landlords

Northeastern University's Community Business Clinic provides free, business-related legal services to startups, entrepreneurs and small businesses, especially those in economically disadvantaged neighborhoods.

KNOW YOUR LEASE

- Starting point primarily **determined by the terms** of lease
- Leases often have *force majeure* clauses for emergencies, but they generally don't excuse rent
- Check whether you have given **personal guarantee**
- **Talk to a lawyer** / other professional advocates about other possible strategies and approaches
 - Terms like offset rights, condemnation
 - Common law defenses like frustration of purpose

COMMUNICATE

- Try to maintain a **positive relationship**
- Check your lease for any **notice requirements**
- **Be proactive** about wanting to find a solution
- Some leases say threatening not to pay is a violation; plan communications accordingly



PREPARE

- What are your **landlord's interests**? Most need to make mortgage payments. They will also be concerned about vacancies. Evictions may be difficult for them.
- **What kind** of landlord are they (institutional, small, etc.)?
- What are **some solutions** that might work for you? ([See back](#))
- Look for **examples** of deals. Some landlords are negotiating.

DOCUMENT

- **Dates** when government orders were issued, performance became impossible
- **Expenses** that tenant incurred
- **Efforts** the tenant made to perform and to mitigate losses
- Evidence of ability or (inability) **to pay** in preparation to negotiate (including plans for financial assistance)

RESEARCH

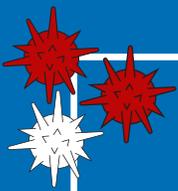
- Can you find legal or technical assistance? ([See back](#))
- Can you apply for **financial assistance** (federal, state, local, private)?
- Is there a **moratorium on commercial evictions** in your state/city? Even so, rent could still be owed and accruing.
 - **Massachusetts** ban on evictions due to crisis for small businesses with under 150 employees, operate only in Mass. and are not publicly traded. Rent not excused.
- Can you apply for **insurance coverage**?
 - Businesses interruption likely only for physical damage, but helpful to have a record of application.

WRITE

- Make sure all agreements get **written down**
 - If electronic, make it clear that a deal has been accepted by both parties



Disclaimer: This one pager does not contain specific legal advice, but is merely a general overview as of April 25, 2020. You should not rely on this material without first seeking legal advice.



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THE LEASE SAYS...

- Rent is due every month



- You pay the base rent and a share of common expenses



- Must be replaced immediately upon use



- The term ends at a fixed date
- Good faith efforts implied



- You are responsible for rent until the end of the term

YOU MIGHT PROPOSE...

RENT

- Rent for X months is reduced and forgiven
- Rent for X months is deferred (maybe with interest?)
 - To the end of the crisis
 - On a payment plan
 - As a percentage of what you earn up to the amount that you owe.
 - To the end of the lease



ADDITIONAL

RENT

- For a certain period of time, you just pay a share of the common expenses



SECURITY DEPOSIT

- Used to pay rent without obligation to replace until after crisis



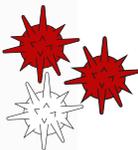
COMMITMENTS

- An extension of the lease (risk in additional commitment)
- Promise to apply for relief (landlord with lender; tenant with government)



TERMINATION

- Ending the lease now (if that's what's best)



RESOURCES

- Legal Assistance 
 - Lawyersforcivilrights.org
 - Law School Clinics
 - Northeastern University
 - Harvard University
 - Boston College

- Technical Assistance 
 - Empoweringsmallbusiness.org
 - Icic.org
 - Eforall.org
 - Boston Main Streets

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