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Guidance for Rent Relief Requests and Other Commercial Real Estate Tenant/Landlord Issues

The COVID-19 pandemic continues to disrupt public health and economic activities across the globe. While the full effects of the virus remain to be seen, commercial real estate professionals need to be prepared for what could be a challenging time.

Relationships between tenants and landlords will be disrupted as millions of people shelter in place, thousands of businesses close their doors, and the U.S. economy faces its biggest challenge since the 2007-2009 Great Recession.

With contributions from CCIM Institute Instructors Cynthia Shelton, CCIM, and Mark Cypert, CCIM, we've gathered some resources to help you navigate potential issues among tenants, landlords, and lenders.

How Landlords Can Respond

As retail outlets across the country close, it is only a matter of time before tenants approach landlords about negotiating rents. When a business closes suddenly, even if it's temporarily, the tenant cannot produce rent, meaning a landlord may have difficulty paying a mortgage (if there is one). There are no winners in this situation. Here are some viable alternatives to mitigate this issue:

- **Rent Reduction.** The landlord can reduce the tenant's rent for a portion or all of the term left on the lease. The usual forms of rent reduction are to reduce the base rent, operating expenses, or both. In regard to retail, it is possible to convert base rent to percentage rent.
- **Rent Deferral.** In this case, the landlord can defer a portion of the tenant's rent but would require them to repay the rent deferred at a later time, either in a lump sum or by increasing subsequent payments. A variation of rent deferral could be to cap or set a base year to operating expenses for a short or extended period of time.
- **Rent Abatement.** If a tenant is significantly past due on rent payments, a landlord may agree to forgive a certain amount of the past due rent if the tenant remains current thereafter.
- **Loan Conversion.** Rather than abating past due rent, a landlord may agree to convert the past due rent into a loan payable over time. The tenant would, however, continue to pay the current rent. The loan is then

evidenced by a promissory note that is cross-defaulted with the lease.

- **Application of Deposit.** If the landlord holds a deposit, this amount could be credited against the tenant's current obligations.
- **Subletting.** Bringing in a new tenant (for part of or all of the rented space) could reduce or eliminate the rent obligations while replacing revenue for the landlord.

How Tenants Can Respond

- Review your lease to see if your rent is simply base rent or it includes pass-through expenses. How much are these expenses and are they set to increase?
- When does your lease end? What renewal options are available?
- What constitutes a default of the lease? What tools are available to the landlord in such a case (penalties, eviction, interest, etc.)?
- Does your landlord hold a security deposit? If so, how much is it?
- Review operating covenants and co-tenancy.
- Speak to your insurance agent to see what coverages are maintained by each party. Know your options to file a claim under existing insurance.
- Does the lease include force majeure, excusing a party's performance due to outside circumstances?
- Explore governmental relief programs, which may be popping up quickly, for tax relief, access to loans, relaxed restrictions/regulations, etc.
- Consider consulting a lawyer to know your options in limiting your financial obligations.
- Based on our current financial position, understand what concessions you would need from your landlord in both best- and worst-case scenarios related to COVID-19.
- Contact your landlord and specifically outline how your business is being impacted by the COVID-19 pandemic. Arrange a meeting and be prepared with data to have an open conversation to identify a solution or combination of solutions.

Examining Challenges Faced by Different Market Sectors

- **Retail:** Retail will see a bifurcated reaction to this economic downturn. Storefronts selling consumer staples - like Walmart, CVS, and grocery stores-will thrive, while dine-in restaurants, for example, could remain closed for the foreseeable future.
- **Hospitality:** Unsurprisingly, hospitality has been decimated by the national response to the pandemic. CCIM Institute Chief Economist K.C. Conway recommends those in the sector ask themselves some basic questions. "For those that own hospitality assets and invest in that space, you need to step back and reflect on what brought you to that property type. Why? Where were you going into this particular period? The market had near record revenues per available room, average daily occupancy, and rental rates. ... Whether I'm a hospitality REIT, hotel owner, or I've got properties, I want to negotiate with my lenders for some debt restructuring."
- **Office:** The office leasing market is likely to suffer in the short-term due to COVID-19 as layoffs diminish tenants' overall need for space and, in many cases, set aside expansion plans they may have had. In addition, tenants who remain in the market for additional space will have a difficult time touring properties. Office workers' pushback against the open office environment is likely to accelerate, as illness is more

easily transmitted in an open environment. Many employers already had recognized that in a competition to attract and retain top talent, squeezing workers into increasingly tight spaces was not a sustainable strategy. Now, an emphasis on social distancing and good health practices - continuing in some fashion even after the crisis has passed - may help reverse the densification trend, with less shared space and fewer workers per leased square foot.

- **Multifamily:** Similarly, the multifamily sector could see significant upheavals as unemployment rises. Business that are closed employ people who now will struggle to pay rent. It's a similar situation to retail, only in this case the tenant is an individual or family who lost its source of income. Tellingly, Freddie Mac announced a [nationwide relief plan](#) for current multifamily borrowers and residents.
- **Industrial:** Industrial, meanwhile, is in a two-pronged situation similar to the retail sector. Grocery and medical items, for instance, are flying off the shelves, so properties in this supply chain are humming along. But other industrial sectors could be in store for tough times, depending on what areas of the national economy slow or stop.

A Legal Perspective

For a legal perspective on commercial leases and the COVID-19 crisis, check out "[U.S. COVID-19: Commercial Leases - Rent Obligations in the United States](#)" from Bryan Cave Leighton Paisner LLP. *Please note: This document provides a general summary and is for information/educational purposes only. It is not intended to be comprehensive, nor does it constitute legal advice. Specific legal advice should always be sought before taking or refraining from taking any action. CCIM Institute's sharing of select resources does not constitute a promotion of that organization or company.*

For more resources, [visit CCIM Institute's Coronavirus \(COVID-19\) Resources and Guidance page.](#)

SAVE THE DATE

COVID-19 Guidance Webinar: Navigating Rent Relief Requests and Other Commercial Real Estate Tenant/Landlord Issues

Wed. April 1 | 1 p.m. CDT

The COVID-19 pandemic continues to disrupt public health and economic activities across the globe. While the full effects of the virus remain to be seen, commercial real estate professionals need to be prepared for what could be a challenging time. On this interactive webinar, CCIM Instructors Cynthia Shelton, CCIM, and Mark Cypert, CCIM, along with Victoria Goldson, partner at Bryan Cave Leighton Paisner, will discuss rent relief requests and other tenant/landlord issues that are beginning to emerge in retail, office, and other commercial real estate sectors.

Please Note: This event has sold out, but those unable to register can watch live on YouTube:

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