

Tenant's Guide to Rent Relief

March 22, 2020

First off, this is a very fluid situation and things are obviously changing rapidly as COVID19 events unfold. The advice below is coming from the Archon team as your trusted real estate advisor. However, we are not attorneys, so we strongly recommend you engage counsel to discuss and verify all of the information below. This is applicable to your existing lease and each situation is unique.

Unfortunately, landlords will not engage brokers regarding rent abatement negotiations. They are speaking with their lenders concurrently with directly speaking to the business owners. Both parties will want to assess each tenant's situation and to gauge the overall health of their shopping center. We suggest that you utilize the counsel of a trusted real estate advisor to arm you with the information you need to negotiate effectively.

Immediate Steps

1. Review your lease and understand the key terms.
2. Review the Force Majeure ("Act of God") clause in your lease with your attorney.
3. Speak with your Insurance Agent and find out if your Business Interruption Insurance applies. Some policies have language excluding a pandemic. Your landlord will require this information and being proactive can save you a step.

The next step is to start an open dialogue with your Landlord. Tenants who proactively communicate will be treated very differently than those who immediately stop rent payment or abandon their unit. They will take a hard line on defaults and their attorneys are already engaged. They anticipate a wave of calls so best to reach out now and start the conversation.

Show your landlord that you are committed to the shopping center and your business. Communication is an easy way to garner initial goodwill. Start by sending a letter to the landlord. *Exhibit "A" (at the end of this document) is a sample letter sent to us by another client.*

On your first call with the landlord, they are going to request a lot of information. They need this information for two reasons. First, they are trying to determine who actually needs help and who is trying to take advantage of the situation. Second, they will likely need lender approval of any modification and the documentation you provide will help with the approval process. Each tenant will be evaluated on a case by case basis.

Landlords will look at the overall stability of their shopping center, the demographics of the market and growth trends. Some will deny rent relief because they can re-lease your space at a higher rent or to a tenant with better credit. From a leasing perspective, it takes months to re-lease a space. Demand has almost completely dried up so it may take longer to lease than it did just 2 weeks ago. They may have to give TI, free rent and pay commissions on a new lease. Thus, even if they take an aggressive stance with you, it makes more sense monetarily to keep existing tenants in place. This is the best long-term solution for all parties.

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Here are the questions landlords are going to ask tenants:

- What kind of relief are you looking for?
- How are you going to use the savings to help your business?
- What are your sales?
- Have you applied for any other help or assistance?
- Has the government mandated that your business close?
- Have you laid off any employees within the last 30 days?

Next, they will send you a Rent Relief Application. *Below in Exhibit B is an example from a landlord.* In addition to the questions above, here are a few more details:

- They will ask for a Personal Financial Statement and past 3 months of bank statements, at a minimum.
- Landlords may ask for a credit check; however, running a credit check can hurt your score and you have enough to deal with right now. Refuse credit checks.
- Tenants with a serious need for relief will complete this in-depth application while those looking to take advantage will not take the time.

If you are seeking rent relief it will come in the form of reduction, deferral or abatement. The landlord will push for deferral to protect the long-term valuation of their asset. Below are a few possible deferral structures:

- Add any deferred months to the end of the lease term.
- Split deferred months into 6-12 payments and add that amount to each of the last 6-12 months of the lease term.
- Amortize the deferred months over the 36 months following the deferral period
 - It is important to understand the interest rate the landlord is using to calculate the amortization schedule.

If you come to an agreement with the landlord, it will be documented as a lease amendment, and your attorney will need to review this legally binding document. If you need a recommendation for a strong attorney, ask your broker for a referral. The agreement will include a Confidentiality Clause which you should take seriously. If you have a friend, business partner or family member that has questions, refer them to your broker and your attorney.

If you are coming up on the end of your lease term, it is unlikely that the landlord will want to discuss a renewal or extension with you right now. They are currently inundated with requests from struggling tenants, so renewals are lower on the priority list. Be sure to check your lease for any "holdover" language. Open communication with your landlord and your attorney is still required if you are in this situation. Do not miss your notice / trigger date to exercise your option to renew. Set a reminder in your calendar.

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If you recently signed a lease for a new location, you may get delayed during the permitting and build-out process. If you are under construction and close to opening, you will have to delay your opening date. Document and communicate these delays to your landlord and request to defer your rent an equal amount of time.

We hope this helps navigate you through the initial steps of your rent relief conversation. We will keep you updated with any new information or creative ideas. This situation is rapidly evolving so if you have any questions, please call or text us immediately. We are here to be a resource and your trusted advisors during this difficult time.

We wish you and your family the best right now. Please take care of yourselves, your loved ones and your community.

Sincerely,

Jon, Janet & Dave
Archon Commercial Advisors

Additional Resources:

- SBA Disaster Loan: <https://disasterloan.sba.gov/ela/>
- Florida Disaster Bridge Loan: <https://floridadisasterloan.org/>

Archon Team Member Cell Phones:

Jon Hellein (850) 501-2478
Janet Galvin (407) 484-9562
Dave Cobb (407) 506-9058

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Exhibit "A"

Template – Landlord Letter

(Date)

VIA EMAIL ATTACHMENT ONLY

Landlord

Landlord Address

Re: Coronavirus - Lease for (DBA name or Tenant Name) located at (address)

Dear [Landlord],

I'm writing because I need to discuss the impact that the national coronavirus crisis is having on my business at your earliest opportunity.

As you know, many states, [including xxxx,] are now requiring certain businesses to close on an indefinite basis. There is talk that a nationwide shut-down of basically all non-essential businesses may be required in order to slow the spread of the virus as much as possible. It is not known how long these partial or full shutdowns may last.

Consumers are paying attention and staying home for work, school, and meals. These changes had already significantly impacted our revenue and our ability to retain good workers even prior to the mandated closures. There is now essentially no revenue coming into the store(s).

I value our relationship and have been a reliable tenant. These are extraordinary times, but we know there is an end to this. In the meantime, we're all being asked to do what we can to protect the health, safety and welfare of our communities. I believe it is in both of our interests to work together in good faith and negotiate a reduction or abatement of rent for this crisis period. I have some ideas that I would like to share with you and am hopeful we can work together.

This is an urgent request. Please reach out to me at (phone) or (email) and let's discuss.

Sincerely,

(Tenant)

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Exhibit "B"

Example – Rent Relief Application

TENANT Checklist - Rent Modification Request

Shopping Center _____ Tenant Name _____
Lease Date _____ Lease Expiration Date _____
Date of Request _____

- | | | |
|--------------------------|---|--|
| <input type="checkbox"/> | 1 | Attach written request for rent modification. Be sure to include reason for request. |
| <input type="checkbox"/> | 2 | Attach 2 year's worth of sales reports (monthly) |
| <input type="checkbox"/> | 3 | Provide the last two year's tax returns |
| <input type="checkbox"/> | 4 | Attach current business plan |
| <input type="checkbox"/> | 5 | Detail efforts made to address your specific issues |
| <input type="checkbox"/> | 6 | Attach detailed operating expense information from 2019 year end and to-date 2020 |

Acknowledgement

All information provided will be used to assess your current situation. You will be notified of the status of your request in writing. Should any request for modification be granted, an amendment to your lease will be necessary. By submitting this request, I understand that information provided and terms discussed are strictly confidential.

Tenant Name _____ (written)
D/B/A _____
Signature _____
Date _____