

# Commercial Lease Restructuring in the Age of COVID-19

By Michael J. O'Brien

As state and local governments continue civil orders directing the mandatory shut down of in-person commercial activity deemed non-essential or non-life sustaining, commercial tenants across the United States have been forced to adjust their business operations to comply with the current and expected regulatory structure. As a result, the pandemic and related circumstances have severely dented the economic prospects of retail and commercial office districts in densely populated cities, where relevant stay-at-home directives have closed restaurants and shops, and where white-collar workers have adapted to working remotely. The reduction of in-person economic activity has resulted in decreased rental income for commercial property owners and threatens the viability of their real estate assets.

To avoid the time and expense of litigation, commercial landlords and tenants should seek to be cooperative and creative in identifying long and short-term solutions that benefit the economic prospects of both parties. By restructuring their commercial leases, landlords and tenants can ensure a degree of stability during an otherwise uncertain period, and provide for amended rights and responsibilities that serve to better reflect the parties' economic position.

From the commercial tenant's perspective, there are several potential lease modifications that may be useful when seeking to amend an agreement to reflect a period of economic hardship. These include rent deferments, abatements, or base-rent reductions, which may remain in effect for the duration of the pandemic or, potentially, for the duration of the lease term. As it relates to a rent deferment, the parties may agree to defer rent payments for the duration of a government directed shutdown with an option to amortize the deferred rent and interest through the remainder of the lease term. This deferred rent structure may also apply to other expenses, insurance, and taxes which may be due under the subject lease.

In an effort to provide for a landlord incentive, the parties may consider extending the lease term and/or accelerating a tenant's option to extend the lease. A property owner may also consider requiring relevant updates as to the tenant's financial position, reports as to a tenant's efforts to mitigate economic loss by way of governmental assistance or insurance recovery, and/or other relevant and appropriate provisions. In considering lease modifications, however, landlords must also be cognizant as to whether existing mortgage obligations require lender approval prior to restructuring, and/or whether other contractual obligations may limit a landlord's ability to modify the terms of an agreement.

Eckert Seamans is available to assist with lease restructuring matters and related financing issues, while also helping clients as they prepare to re-enter offices and retail spaces consistent with COVID-19-related health and safety regulations.