



RENT PAYMENT DURING A CRISIS

Let's look at rent payment during a crisis. Should you pay rent? Should you stop paying rent? How should landlords handle rent payments during a global crisis? It seems that the hottest topic of conversation over the past few days is what to do when a tenant's business is adversely affected by "COVID-19". Based upon conversations with landlords, tenants and property managers there is no doubt that many tenants and landlords are already thinking about how to handle the April 1st rent payment. Our team recently posted an article "[Is it Time to Sublease?](#)" where tenants are requesting brokers to help them sublease their space due to the loss in business. Since we work with both landlords and tenants, this article will cover both perspectives. Please note that whether you are a tenant or landlord, we encourage you to read the entire article as there are overlapping ideas in each section.

It is important to recognize that we are in an interdependent economy and there are many tenants who are very financially stable as well as some that are struggling and, for those in particular, this crisis will exacerbate the situation. At the same time there are many well capitalized landlords with the financial capacity to make concessions to help a tenant's business when warranted, but there may also be less capitalized landlords who are in a similar situation as a struggling tenant.

So hopefully everyone will work together as fairly as possible to minimize the economic damage that we are all observing and that many are experiencing. The goal is to make this a win / win for all parties involved. With these thoughts in mind, here are our recommendations.

Rent Payment During a Crisis – What to Do as a Tenant

Be Honest – One problem is that over the past decade many tenants have made it a part of their practice to ask for rent reductions and other concessions just to see if they can extract something from a landlord whether or not the request is warranted resulting in many landlords being skeptical of any request. This "dishonestly" as we see it has damaged the landlord/tenant relationship in many cases. Now is the chance to repair the relationship and honesty is critical so if you really don't need a concession, don't ask for one.

Be Prepared – If you need a concession, be prepared to provide the landlord with 2019 sales reports and year-to-date 2020 sales so the landlord can review and compare the sales history. Also, if your business is independently owned, be ready to provide personal financial statements. Although your sales may be down, if you are sitting on cash or other liquid assets, you need to be ready to utilize such assets. Understand that having cash doesn't necessarily mean the landlord won't work with you. They recognize that you have other obligations, but being forthcoming with all the information will gain significant goodwill with most landlords.

Full Disclosure – Be ready to tell the whole story. Is your business currently closed? If so, when did it close? Did you elect to close it or were you mandated to close it? Are you partially open? If so, what are you doing to mitigate your losses? What will a rent concession help you accomplish?

Know Your Obligations – Recognize that you signed a binding contract that obligates you to pay a fixed rent whether your business "knocks it out of the park" OR "strikes out". In our opinion, you should do everything possible to fulfill your contract. That being said, be prepared to be creative. Maybe you have a lease that expires in 2021. It might very well be reasonable to ask for 50% rent relief for the next 6 months if you agree to extend your lease term. Or maybe you can waive certain rights that you have relative to exclusives, rights of first refusal, or prohibiting other uses in the center. Keep in mind, leases are in-depth documents with a lot of provisions. It is not simply the rent and lease term that may be up for negotiation.

Rent Payment During a Crisis – What to Do as a Landlord

Listen to the Story – Generally speaking we believe that a tenant should pay their rent or leave BUT these are different times. Although we understand that some may be skeptical, there are many hard-working independent business owners that are doing everything they can to keep their businesses afloat while also addressing their personal needs. There are also many quality corporate tenants that are simply going to be in a cash flow crunch and are going to need help from numerous parties to get them to the point where their business can recover.

Ask for Information – Request 2019 and 2020 monthly sales reports, personal financial statements (if appropriate) and a written description of the status of their business including what they foresee is required to return to normal. For example, they may indicate that the day their business is allowed to re-open, they believe they will be fine OR they may think that even if the world starts to return to normal, it is going to take a while for their business to ramp back up.

Request an Offer from the Tenant – Let the tenant tell you what they really need. Is it rent abatement (free rent), a rent concession (discounted rent), or rent deferral (effectively a loan).

Communicate – Even if you need some time to think about the tenant's proposal, make sure you get back to them as quickly as possible. This is a very stressful time and communication will be key. You wouldn't want a situation where you were about to grant rent relief only to find out that because you waited too long they closed your location and put their resources elsewhere where the ownership was more responsive.

Make a Deal – I suggest avoiding giving away anything. If you are going to make a concession, there should be a tradeoff. Whatever strategy you use, we suggest getting it in writing along with a clause preventing the tenant from talking to the other tenants about the temporary deal they got. Here are some approaches you might take:

If you are going to abate the rent or make a rent concession make it contingent upon the tenant fulfilling the balance of their lease term without default. This way they have a greater incentive to stay current once the world improves.

In certain circumstances, it might make sense to obtain the right to terminate the tenant's lease. Make an agreement to allow the tenant a 50% rent discount but you have the right to terminate the lease if you find another user to take their space. This would not be a mutual termination. Only the landlord would have this right. For tenants who could easily relocate to another space if you terminated (i.e. furniture, clothing), this could be a win/win.

Defer the rent currently and add it to an extended term. If you gave a tenant a \$30,000 concession in 2020, but then increased their rent by \$500/month over the 5 years that starts in 2022, this could help you especially if you plan to sell or refinance after 2022 (assuming you believe the tenant will survive).

Avoid an agreement that goes too long, but also one that goes too short. It seems pretty obvious that this is not just going to be an April rent problem. It could easily be 4 to 6 months or longer. So instead of going through this dance repeatedly, make a deal that at least covers the next few months so that everyone, including yourself, can plan accordingly. BUT if the tenant asks for concessions for the next 18 months, then I view this as bad faith on their part and negotiating with someone who makes such an ask is usually not someone who warrants a counter offer.

Franchisees – If dealing with a franchisee, ask what the franchisor is doing to help. If the franchisor isn't doing anything, this could tell you that the tenant is bluffing or that the franchisor doesn't believe in the viability of the tenant either. Also, make sure you get the same sales reports that they send to the franchisor. And, if you agree to provide assistance, make sure the franchisor knows that you helped in case the franchisee just doesn't survive. In this case, hopefully the franchisor will try and help you find another franchisee since they know you tried to help their brand at your center. Remember that you can only help those that want to help themselves. Some tenants are simply going to take actions like closing their store and moving their inventory out and then possibly threatening you to make a deal of their liking or they will never reopen. If a tenant does this, you should probably hire an attorney. There is likely not going to be a way to salvage this relationship. You are going to have to pick and choose your battles.

Rent Payment During a Crisis – A Few Other Considerations

Insurance – we suggest a discussion take place with a knowledgeable advisor on whether property or liability insurance held by either the tenant or landlord may be beneficial in this situation. In all likelihood, it will not be and most policies will have language that “specifically exclude loss caused by virus or bacteria or exclude loss caused by communicable disease.” It's important to know where you stand and what your options are.

Federal Programs – there may be some federal and state grant and loan programs that tenants can apply for. The following is a link to the Small Business Administration's website that provides a lot of guidance regarding Federal programs that are available. This may be helpful to both tenants and landlords. <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

Other Resources – Here is a page that provides resources for Arizona. <https://www.azdhs.gov/preparedness/>

Advocate - We know it can be unsettling approaching a landlord or tenant. Let us be your advisors and advocates. We will work on your behalf to make sure there is a win/win scenario for everyone involved. We will act as a 'buffer' so that you can maintain the best relationship possible moving forward. [Contact us](#) directly today to discuss your options and learn more.

We truly hope that this article provides value to both tenants and property owners. If we work together in good faith versus as adversaries, we are confident that good relationships, goodwill and positive outcomes will result from this very challenging situation.

- The ICRE Team