

**GUIDANCE FOR LANDLORDS ON RENT RELIEF  
REQUIRED BY THE CORONAVIRUS SHUT-DOWN  
April 1, 2020**

With businesses shut down in the fight to defeat the Coronavirus pandemic, some tenants may need some rent relief. These are some guidelines for landlords related to such relief.

**1. Call your tenants before they call you.**

If you have not already, call your tenants and communicate your expectations before they call you. Some larger, multi-store tenants are dictating terms to landlords. For example, Cheesecake Factory announced unilaterally that it was not paying rent in April. If you can get in front of that kind of pronouncement, you might be able to get terms in place before less favorable terms are dictated to you.

**2. Make sure your tenants are seeking CARES relief.**

As we type this, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) has reportedly just been signed into law by President Trump. CARES is designed to get \$2Trillion into the US economy to preserve jobs, rents, and mortgage payments.

The CARES Act provides a forgivable loan with no fees, no personal guaranties, and no prepayment penalties. In general, if your tenants stay in business and keep their employees, they don’t have to pay back any money used for payroll costs, rent, or utility expenses. Tell your tenants to contact their bankers or other SBA lenders immediately to start the process of accessing this money. This relief is retroactive to February 15, but it likely will not be in place in time to address April rent.

You should contact your banker to explore CARES relief for yourself. In addition to payroll, utility, and rent payments, mortgage interest payments are also forgiven from loan repayment.

**3. Consider a standardized rent relief plan.**

If you have multiple tenants, you may want to develop a standard plan which you can reduce to writing and offer to tenants uniformly. This approach will minimize negotiation by establishing a basic approach that can be tailored to meet specific tenant needs. Realize that some tenants may not be able to work under your plan’s basic approach and may need something completely different to address their specific needs.

**4. Try to establish a plan now to address the entire period.**

You do not want to have to negotiate every month with every tenant until this is over. Try to develop a plan that will work until the COVID-19 disruption is over. The CARES Act is structured to help through June 30, 2020. Realize that it may take longer for your tenants’ businesses to get back to anything recognizable as normal.

**5. Elements of a relief plan.**

There are two elements of most rent relief plans: deferral and recapture.

- a. **Deferral.** Landlords are taking various approaches covering typically one to three months of rent payments starting in April. Plans may need to go longer as mentioned in the previous section. Some are deferring 100% of the rent payment, and some are deferring as little as 50%. The 100% deferrals are usually for one or two months. You

might consider stepping rent up over time, for example defer 100% in April and May, 50% in June, and 25% in July.

If you have hard costs that are not going away (building services, building maintenance, utilities, etc.) you may want to cover those costs with small, partial rent payments from your tenants.

- b. **Recapturing rent.** Some landlords are recapturing rent through increased rent once the deferral period is over. For example, one landlord is deferring 50% of the rent for April and May, then increasing rent to 125% for June, July, August, and September.

Others are deferring rent and extending the lease term. For example, one landlord is offering no rent for April and May in exchange for extending the lease term for two months. Another is offering 50% rent for four months in exchange for the same extension.

- c. **Define contingencies.**

You might propose some contingencies that match your tenant's situation, but be sure they are specific, measurable, and objective with a clear timeline for starting, stopping, and milestone dates. For example, if your tenant's business will run at 25% of its typical revenue until people are back at work, then you could propose 25% rent until the largest local employer retracts its work-from-home directive.

- d. **CARES Act contingency.** You might require tenants to pursue CARES relief as a condition to receiving rent relief from you. If the tenant receives CARES funds, then the tenant will pay any deferred rent immediately, and the plan will be voided. This makes some sense for the tenants because the CARES loans are forgivable if applied to rent.

- 6. **You and your tenants are mutually dependent.**

Your tenants may not have thought about it this way, but at some level, every landlord invests in every one of its tenants' businesses, and every tenant invests in its landlord's real estate. Remind tenants of that. They need to know that you do not want them to close and that you will work with them to manage cash flow in order to avoid closing.

Remind them that you have cash flow management issues, too, that they are not the only tenant needing help. Point out how your situation parallels theirs, that you have bankers, employees, and vendors who are looking to you for payment just like your tenants do.

- 7. **Review your lease.** Make sure each relief plan is consistent with each lease.

- 8. **Get it in writing.**

A letter agreement signed by you and the tenant should be fine in most cases, but check with your attorney. You may need a more formal amendment. Be specific about exactly what months' rent payments are being deferred and how the deferral works, and when you will catch those payments up and how.

- 9. **Consult with your attorney.**

Nothing in this document is legal advice. You should consult with your attorney and let her know what you are trying to do and how.

- 10. **We are all in this together.**

Finally, as far as coronavirus is concerned, we are all in this together, and **\*we are all\*** going to experience financial pain. Even with CARES relief, many tenants will not survive the economic disruption from COVID-19 without help from their landlords, bankers, and vendors. Be willing to work with them to provide the relief they need and help protect their employees' jobs.

The context for what we are all experiencing is fluid. No one knows how long we will be operating under social-distancing protocols. As mentioned, the Treasury Department designed the CARES Act to address three months of economic disruption and has indicated that they will propose more if more is needed. Communication and cooperation with your tenants will be key to getting through this disruption, regardless of how long it lasts.

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