

Creative Solutions For Paying Rent During COVID-19

BY ANDREW LEFFLER
Real Estate Attorney
and JOSH CROWFOOT
Real Estate Attorney

Chambliss represents both landlords and tenants across the property-type spectrum — retail, industrial, warehouse, and office. We have navigated our clients through some difficult changes these last five months, during which the COVID-19 pandemic has taken its toll on the local economy. With the decline in revenue due to many people simply not leaving their homes, business tenants have understandably had to overcome unexpected challenges in paying rent. We've seen landlords and tenants both find creative solutions to address payment of rent. Here are six solutions that we have seen in the local market and beyond that your business may consider:

1. Full Abatement of Rent. The landlord will wholly excuse payment of base rent and additional rent (e.g., a tenant's proportionate share of common area and building maintenance) for a specific period, without any requirement for repayment in the future.

2. Rent Reduction. The landlord will reduce the amount of base rent for a temporary period of time and not expect repayment of the discounted amount. Most often, the landlord will require the tenant to continue to pay full additional rent.

3. Deferral of Rent. The landlord will defer rent, in whole or in part, for a period of time. The landlord does not forgive the deferred rent but has the tenant pay it back over time. The period of time to repay the deferred rent may be a discrete period like six months, or the landlord may simply require repayment prior to the expiration of the term. The deferred rent is typically converted into a monthly amount that will be added to the amount of base rent in the future.



Andrew Leffler



Josh Crowfoot

4. Payment of Additional Rent Only. Some landlords wholly excuse payment of base rent but insist that tenants continue to pay for the basic costs to keep the premises open — real property taxes, insurance premiums, and maintenance.

5. Extension of Lease Term. Some landlords defer rent for a period of time and increase the existing term by the same amount of time. The landlord does not collect rent for a period of time ("Deferral Period") but expects the tenant to start paying the regular amount of rent after the Deferral Period

expires. Landlords like this approach because it preserves the net operating income (NOI) for the purpose of determining a cap rate (i.e., the number of rent-paying months stay the same) in the future for a possible refinance or sale of the property.

6. Conversion to Percentage Rent. Some larger scale tenants insist that landlords share the risk associated with the negative effects that the pandemic has had on their ability to collect revenue. As a result, many tenants are asking for rent payments to be converted from fixed rate payments to those based on the percentage of revenue earned by tenants open for business. In such an arrangement, the amount of the landlord's rent is directly tied to the success of the tenant's business.

While optimism abounds about a vaccine and the eventual economic turnaround, the COVID -19 pandemic has demonstrated just how fragile our local economy can be with respect to unexpected global events. Such unprecedented circumstances have called for creativity and flexibility among commercial tenants and landlords as they adjust to the "new normal." As we navigate through these uncharted waters together, we will continue to be a resource for our local real estate community.

Josh Crowfoot and Andrew Leffler advise Chambliss' commercial real estate clients on a wide variety of developments, including projects in the hospitality, warehouse, office, retail, multi-family, health care, and vacation rental sectors. They represent regional and national real estate development and real estate finance clients on every side of the transaction, whether they are a seller, buyer, lender, landlord, tenant, or investor. For more creative tips and legal updates, please refer to the COVID-19 insight center at chamblisslaw.com.