

COMMERCIAL LANDLORD/TENANT PRACTICE DURING THE TIME OF COVID 19.  
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Presented by:

JAIME D. EZRATTY, ESQ.

Horing Welikson Rosen & Digrugilliers, PC  
11 Hillside Avenue  
Williston Park, NY 11596  
[JEzratty@hwrpc.com](mailto:JEzratty@hwrpc.com)  
516.535.1700

I. Current Moratorium

- A. August 20 - no evictions
- B. Courts Closed temporarily
- C. Emergency Applications
- D. Motions
- E. Landlord's Inability to Enforce a Lease

II. No Rent Waiver

- A. Possible Rent Deferment v. Waiver

III. Settlement of Matters:

- A. Disputes can/should be settled now
- B. Number of cases that get to trial, during normal times
- C. Who to initiate a Conversation here?
  - a. The Lease Requirement - payment of rent
- D. What will LLT Court look like when it reopens?
- E. The Lease governs in Commercial Matters
  - a. Contrast this with an ambiguous term

IV. Implications of a Modification of Rent/Rental Terms

- A. Tenant's Failure to Pay
  - a. Affect right of Option?
  - b. If rent deferment/waiver, and in writing, no default
- B. If a LL modifies it's Rent Schedule
  - a. Less income for maintenance, taxes, mortgage
  - b. Will LL need a Third Party Consent?
- C. Different types of Modifications
  - a. Waiver/Deferment
  - b. Adding a Personal Guaranty?
  - c. Extend term of Lease?
  - d. If T pays future, then waiver?

V. Balancing Act

A. LL's Side of this equation

- a. Court (settlement anyway)
- b. Expense
- c. Adjournments
- d. Empty space?

B. LL and T as "Partners?"

C. Tenant's Side of Equation

- a. No waiver
- b. Corporate Tenant - hire counsel
- c. T - recipient of PPP Loan?

VI. Lessons Learned

A. Relationships

B. Coming into Court

VII. Commercial Leases

A. Lease Governs

B. Force Majeure Clauses

- a. Main purpose
- b. Narrow interpretation
- c. Economic hardship
- d. Is the condition covered by the Clause?
- e. Requirement to pay rent

C. Frustration of Purpose

- a. Common Law Doctrine
- b. Purpose of Lease
- c. Closed business
- d. Failure of Physical Location v. failure of business

D. Impossibility or Impracticability

- a. Theory
- b. Applicability in NY Courts