

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

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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