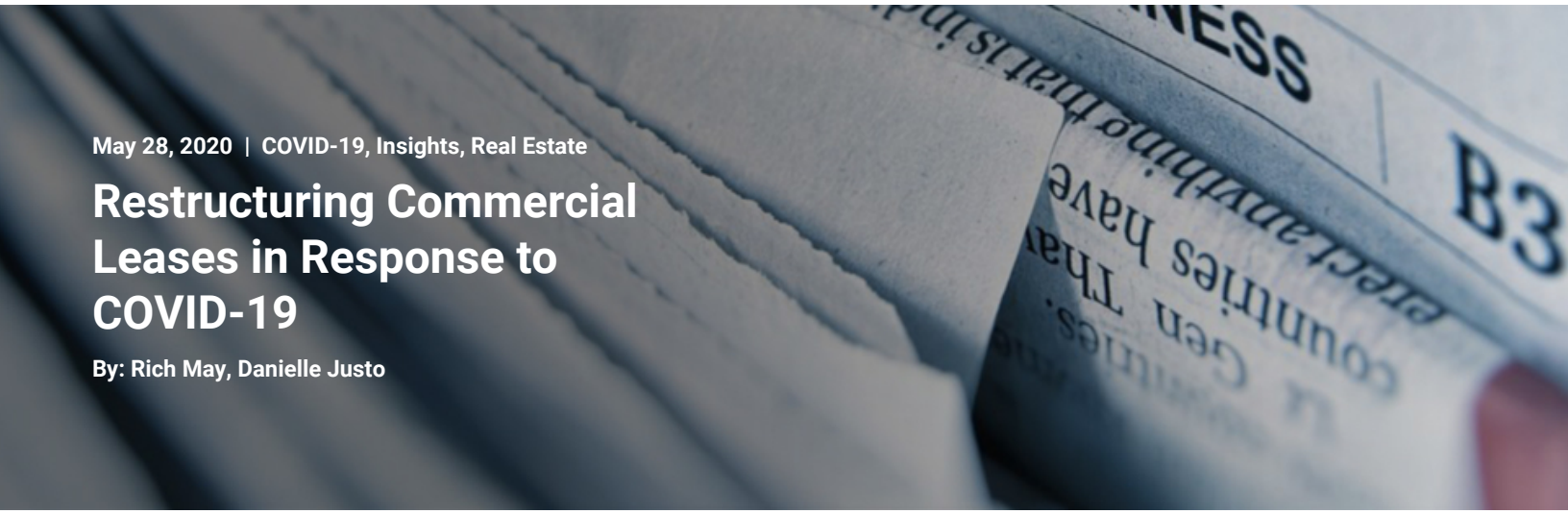


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Restructuring Commercial Leases in Response to COVID-19

By: Rich May, Danielle Justo

The health crisis, coupled with the economic uncertainty it has caused, continues to adversely impact many commercial leasing relationships. Business closures and social restrictions have made it difficult for many businesses to maintain cashflows. Even those exempt from closure orders have experienced sharp declines in business. Landlords remain bound by their debt service requirements, taxes and insurance obligations. Fortunately, it is often possible for tenants to work with their landlords to restructure their leasing arrangements in mutually sustainable ways. Rich May's Commercial Real Estate team has been regularly advising both landlords and tenants on different strategies and solutions for long and short-term workouts.



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Some proven solutions include abatements, deferments, or reductions of base rent for the duration of the business shutdown. Rent deferments can stay in effect until the end of the shutdown period or the end of the lease term. Many tenants will propose repaying the deferred rent on a schedule, which will vary from business to business. Under these circumstances, landlords may propose to amortize the deferred rent and any interest from the end of shutdown through the remainder of the lease term. Other landlords might prefer that tenants pay the deferred rent on a reduced, narrower installment schedule separate from that of regular payments. Though these arrangements are more frequently applied to base rent, they may be applicable to all types of additional rent including building operating expenses, insurance, and real estate taxes. In some instances, particularly where the tenant either solely occupies the property or shares it with the landlord, the landlord may require that the tenant assume full responsibility of additional rent, as opposed to only its pro rata share. Generally, these rent adjustments remain subject to acceleration provisions in the event of default, as defined by the lease.

Certain protections may also be desirable from the landlord's perspective. For instance, the parties may agree to extend the lease term and/or add, move up, or accelerate a tenant's option to extend. A landlord might also require additional security/guaranties, periodic reports of the tenant's adjusted financial position, or efforts to mitigate business interruption by way of governmental relief . The degree of necessity for these protections

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have varied among our clients. Landlords are better positioned to negotiate upon carefully evaluating their leases on a case-by-case basis, factoring in each tenant's respective plans and capacity to continue business as well as their own capacities to re-fit or re-let the space, especially given the anticipated delays caused by changes in the construction regulations.

Any and all lease amendments should be in writing. We recommend that landlords and tenants consult with counsel to ensure that enforceable language is used, to ensure consistency and to minimize latent risks of default. A written amendment should not require an inordinate amount of time and expense, but will go a long way toward minimizing the likelihood of disputes down the line. Rich May's commercial real estate group is available to assist with these matters.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Atakelti Desta or Danielle Justo.

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