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Is Louisville staring down a coronavirus-triggered rent crisis?

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The coronavirus outbreak has buckled major industries and small businesses, and now is bringing immense concerns nationwide about how commercial tenants will pay for rent.

Some landlords also are left wondering if they can meet financial obligations to lenders while also offering short-term rental relief. The situation has created confusion and uncertainty that local attorneys say won't easily be resolved in the weeks and months to come.

"It's the case of first impression," said Tandy Patrick, a partner and co-chair of the U.S. Real Estate practice for Dentons Bingham Greenebaum in Louisville. "Certainly nothing like this has happened in my lifetime."

We spoke to local attorneys and a veteran real estate broker about what questions they are fielding and advice they can give as renters and landlords stare down this growing crisis.

The rent is due. Now what?

Patrick specializes in commercial real estate transactions and said her calls have run the gamut as clients seek guidance on the steps that must be taken to stay afloat as revenue streams have been disrupted or completely eradicated.

She said national retail tenants sent letters to their landlords early on in the outbreak to outline their status and needs. On a more local level, she said some tenants are being very aggressive by telling landlords they're not paying rent for up to four months because governors have forced them to close outside of their control.

Others are less aggressive, opting instead to negotiate reduced rents or rent deferment for 60 to 90 days as they look for ways to survive the onslaught.

"Some [tenants and landlords] are working together with the understanding that we all rise and fall with the tides," Patrick said. "What's a landlord going to do with an empty shopping center?"

For instance, some landlords are asking tenants if they can pay half the rent now and make up the difference on the back end of the lease. Others are asking tenants to make up the difference by either extending the lease terms or breaking rent up into installments during a certain period of time.

"We're dealing with a case-by-case basis," said Phil Scherer, chairman of Cushman & Wakefield-Commercial Kentucky, a local commercial real estate firm. "There won't be a blanket waiver of rents or abatement."



IMAGE PROVIDED BY GETTY IMAGES (ANDIPANTZ)

The coronavirus has decimated some companies' revenues, making it hard to meet rent requirements. Local attorneys weigh in on what steps tenants and landlords should take to survive the onslaught.

Whether or not landlords are even open to such concessions depends on their own financial standing and cash flow. Many landlords have their own debt payments with lenders that are due, and it may hinder them from offering concessions if they're not well capitalized.

"There are some landlords that are not in any better decision to operate during this time than their tenants," said T. Gregory Ehrhard, a member and local real estate attorney with Stites & Harbison PLLC.

Ehrhard said it's very important for landlords to talk to their lenders before making quick decisions on rent concessions.

"A landlord that starts wheeling and dealing with its tenant when its lender has not been brought into the fold could be running into some trouble later," he said. Patrick offered similar advice for tenants who may be thinking about balking on rent without having a frank conversation with their landlords first.

Scherer said he anticipates some scenarios where a lender steps in to help soften the blow for tenants.

"You may find a situation where the bank has to be the landlord's partner to deal with some of these concessions so a landlord doesn't get into default on a loan," he said.

Ehrhard said it's a fluid situation and no single solution will apply to all cases.

"It's a balancing act between making sure your tenant is doing what it can do and also working with your lender and funding sources as a landlord to make sure you are doing the same thing," he said.

Legal questions muddy the waters

Because the coronavirus outbreak is an incomparable event in modern history, there's no legal precedents set by the courts to navigate the months to come.

Evictions are being suspended and courts are paused so foreclosures and defaulted loans are not being considered right now. But Patrick said she knows some landlords are already sending default notices to tenants so they can secure their legal rights when the cloud created by the coronavirus lifts.

Yet it's unknown right now how long such cases could take to litigate.

Another pressing legal concern is defining "force majeure" clauses in some commercial leases. Force majeure typically refers to unforeseeable circumstances that prevent someone from fulfilling a contract. The clause is often applied to natural disasters, such as hurricanes and floods; acts of war; or catastrophic explosions.

Patrick said the coronavirus outbreak is a catastrophic event for businesses, but courts will have to offer legal guidance on whether this clause could be applicable. The issue is further muddled by the fact that there is no universal shutdown order in the U.S. States are implementing their own business restrictions, and some of the changes are suggested rather than forced.

"We're not locked out of the building, and we're not going to be arrested for going into the office," Patrick said of her own firm as an example.

That being said, she expects this event to change how future leases are structured and may even lead to amended leases to specifically define what scenarios are applicable in the future.

Scherer also expects a paradigm shift that could lead to some companies, particularly office users, downsizing commercial space in the future after being forced into a remote working environment.

What aid is out there?

Ehrhard said his clients are not rushing out to the courthouse to sue tenants, but landlords are asking tenants what type of loan assistance they are seeking, be it disaster loans from the U.S. Small Business Administration or \$349 billion in forgivable loans to small businesses that started Friday (you can read about this program in more detail [here](#)).

That program, known as the Paycheck Protection Program, is expected to overwhelm banks but would offer direct assistance to small businesses that want to retain their staff. The program also can help with some non-payroll expenses, such as rent and utilities, during the crisis. The interest rate for those loans is starting at 1%.

"It's cheap money, and we think you can get access to it quickly," Ehrhard said.

As people move forward, Ehrhard said it is incumbent for tenants and landlords to carefully read and understand their leases and understand what rights they have in writing.

"We're all in this together here, and it's going to take a concerted effort to get through it," he said.

Marty Finley
Reporter
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