

## Commercial Rent Payments During the COVID-19 Crisis

For many businesses that don't own the facilities in which they operate, their rent payment is the largest operating expense other than wages. Both landlords and tenants are suffering as a result of the COVID-19 pandemic and whether to pay rent and what rights the parties have has become a common and evolving question.

In recent advisories we have addressed the [enforceability of contracts](#) in general and the [moratorium on payment of mortgages](#).

For tenants, whether to pay rent is not a question with only one answer. Several factors must be considered, including:

- Does the lease provide for rent relief under certain circumstances?
- Does the landlord have an express right to terminate the lease?
- Do any of the tenant's financial loan covenants require the tenant not be in default of its lease at any time?
- Will the use of funds to pay rent cause other, potentially more important, obligations to be breached?

Obviously these factors and others will be specific to each tenant's circumstances. However, one factor common to all situations is whether there is a right to withhold rent because of the current moratorium on commencing or continuing eviction proceedings. Tenants should be careful not to confuse a landlord's inability to evict non-paying tenants during the eviction moratorium with a landlord's right to terminate a tenant's lease for failure to pay rent. In many cases commercial leases contain express language allowing the landlord to terminate the lease without beginning an action in court. It is advisable to seek professional guidance before deciding to stop paying rent.

Landlords, like everyone else, are not immune from the COVID-19 pandemic. While some landlords may be relieved of their obligation to make mortgage payments, not all landlords are so fortunate. Unlike lenders regulated by New York State, the federal government has not enacted a mortgage payment moratorium, but merely recommended to federally-regulated lenders to work with borrowers who are not able to make their mortgage payments. Hence, landlords are cautioned to contact their lenders to determine whether mortgage payments can be suspended without consequences.

Like everything else presently, things can change quickly. Currently there are two proposals pending in the New York State Legislature to provide rent relief. It is unknown at this time whether either proposal will be approved by the legislature and Gov. Cuomo.

While the fate of New York rent relief legislation is yet to be determined, economic assistance from the federal government is available through the SBA under the CARES Act. A summary of the assistance can be found [here](#).

The attorneys at Bond, Schoeneck and King are available to assist you with analyzing and determining your best options. For further assistance with your lease matters, please contact [John B. Elleman](#), any [attorney](#) in our [Property Practice](#) or the attorney at the firm with whom you are regularly in contact.



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