

# MSF CLIENT ALERT

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## FAQs On The State Of The Commercial Leasing Market In The COVID-19 Era

*As the COVID-19 crisis continues, we have received numerous inquiries about the state of the commercial leasing market. Below, we answer some of our most frequently asked questions.*

*April 20, 2020*

### ***With the closing of non-essential business, what have you been seeing in the terms of rental adjustments?***

The responses to non-essential business tenant requests for rental adjustments vary. Many landlords are refusing to give any relief at all, relying on the force majeure provisions in most leases that state that performance obligations may be excused due to acts beyond a landlord's reasonable control, but which specifically require the tenant to pay rent and monetary obligations. This is true of both retail and office tenants.

Some landlords take a pragmatic position and are agreeing to either a partial (50%), or total deferral of rent for one to three months, permitting a tenant to repay the deferred monies over a four to six-month period, sometimes starting in August 2020, sometimes in January 2021. This is particularly true for retail tenants.

At this juncture, Landlords are generally not agreeing to abate or forgive rent totally. That may change if mandatory business closings continue.

### ***How about for essential businesses that can still remain open? What have you been seeing in terms of rental adjustments there?***

Essential businesses that remain open have been requesting the same rent deferrals as non-essential businesses. The most impacted of essential businesses

that are requesting rent deferrals or abatements are restaurants, which in New York may remain open for pick up or take out.

### ***What about all this government money, like the Paycheck Protection Program, does that affect the way rent adjustment issues are being handled?***

There are some landlords who are requiring that to the extent a tenant receives PPP or other governmental monies, the tenant must pay the maximum portion of that money to the landlord and reduce the deferral by such amounts.

### ***How about new leases and lease renewals, are these transactions moving forward?***

Some leases are moving forward, especially large corporations that need the space as part of their expansion programs. However, all retail leases, especially restaurant leases, have slowed significantly and tenants are now taking a wait-and-see attitude. The expectation is that landlords will likely be more negotiable, and prices will reduce. Additionally, all tenants are being careful to incorporate provisions that a landlord cannot deliver space prior to the lifting of governmental orders mandating closure.

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## ***How should the risks of global pandemics be allocated in the leases going forward?***

The risks of global pandemics should be covered by business interruption insurance. Tenants may try to include protection from rent payment in the force majeure clauses, but landlords will resist bearing this risk.

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For more information on commercial leasing issues in the age of COVID-19, contact a member of our real estate team.



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