

Business Interruption and Rent Relief

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Over the last couple days, we have received several inquiries from clients asking how to go about seeking rent relief from their landlords. Their businesses have no or reduced income due to shutdowns related to the COVID-19 pandemic and they won't be able to pay rent for very long before they run out of cash.

I decided to write about the process of seeking rent relief and share it with all our clients and Vistage friends. This information comes from several years as a landlord leasing manager where tenants approached me asking for rent relief as well as another 19 years exclusively representing tenants as a Real Estate Advisor & Tenant Advocate.

This is for those experiencing loss of business and/or complete shutdowns. I'm definitely not singling out anyone in particular, but you may know someone who needs this information. They are understandably stressed and trying to figure out how to pay their employees, pay the rent, and keep their businesses viable or at least treading water until they can get back to serving customers. I certainly don't have all the answers, but here is what I recommend.

1. Make a Specific Request – when you make a request to the landlord, be very specific. Don't call the landlord and just say you need help for a while. State an exact request. I was talking with a client this morning and agreed their request would be to move a few months of free rent they are due in the future to today continuing until 60 days after the government allows large group gatherings. The logic is that they have no income at all while the shutdown continues and once the switch gets flipped back on, it will take a couple of months for activities to resume and cash to start flowing again. In this case, we aren't asking the landlord to give up anything. We're just asking for the timing of rent payments to be rearranged.

In most cases, there is no future free rent so you must decide whether to request that the landlord waive rent totally or just defer it. Asking for a total waiver is a much bigger ask than just deferring payments. In the latter case, you are really only asking the landlord to give up on the time value of money while the former is a total loss. Think of some things that you can give the landlord in return. For specific help with ideas on this we should talk.

As you can imagine, it's hard for landlords to agree to waive/defer rent because they have to answer to investors and lenders and it probably also makes a difference in their ability to pay their employees too. Remember that your request to the landlord, if granted, may put them in a similar position to what you are experiencing.

2. Provide Financial Backup – a request for rent relief is essentially the same thing as informing a bank that you can't make payments on a loan. You should, therefore, be prepared to provide all the same information that you would expect to give a bank.

My recommendation is to give the landlord a current balance sheet, P&L and cash flow statement. You need to demonstrate how much cash the business has, what your burn rate is, and how long you can survive without the relief you are requesting. You must show the landlord that the chances of the business surviving and continuing to pay rent in the future is directly contingent on receiving the rent relief you have requested. Be prepared to show bank statements if needed to add further credibility to your request.

DO NOT make a request for rent relief unless you are absolutely at risk of going out of business otherwise. Don't try to take advantage of a horrible health and economic disaster for personal gain at the expense of others.

If there is a personal guaranty in the lease, the guarantor should be prepared to provide his/her financial information as well. If the business is failing, but the guarantor is flush with cash and investments, seeking rent relief won't be granted.

3. Have a Recovery Plan – it's not enough to show the landlord how the business will fail without the rent relief. You must demonstrate how the business will ultimately succeed, start paying rent and pay back the deferred rent in the future. Show specific steps that you will take which will clearly show how revenue will start coming in and turn things around. Maybe it's a new marketing effort to be implemented or a different way of doing business or a new way to reach new customers.

In today's COVID-19 situation, it's really just a matter of government regulation allowing you to just start operating again. But how long will it take to start generating revenue again and what specific steps will you take once the switch is flipped back on. The landlord must believe you will succeed if they provide short-term help.

4. Share the Pain – landlords know they have a large target on their foreheads when a tenant is in financial trouble. The number 1 expense for most companies is personnel – payroll, benefits, etc. But the number 2 expense is the occupancy cost of the office. The big difference is that personnel is a highly variable expense while you are stuck with your lease at least for the length of the lease. The lease is a fixed expense with occasional opportunities to make adjustments when it expires.

Landlords know that when a tenant is in trouble, they are first in line, so you need to demonstrate what you have done to spread that pain around before going to them. Don't go to the landlord if you haven't taken a pay cut yourself or taken any other steps to reduce expenses. Here are some things you might want to consider:

1. Take a pay cut yourself or no pay at all
2. Leadership & staff pay cuts
3. Layoffs
4. Collect receivables
5. Require prepayment on new sales instead of net-30 terms
6. Implement new marketing activities
7. Vendor concessions (extend payment terms, better pricing)
8. Make a claim on your business interruption insurance (BI) policy (more on this below)
9. Take on a new partner
10. Seek a business loan (see SBA info below)
11. Consider merging with another company

Hopefully, you have BI Insurance. Sometimes your office lease requires it, but it's one of the first things tenants try to negotiate away. It basically pays to restore your business to the position it would have been in had the damaging condition not occurred. In Texas, fire, tornado and hail are common conditions that damage a building to the point it can't be used and a BI claim may be appropriate. If you have it, contact your agent immediately to review your policy and possibly open a claim.