

# CORONAVIRUS CRISIS: DIFFICULT DECISIONS AHEAD FOR LANDLORDS AND TENANTS

By Jim Hochman & David Liebman, SIOR

*This article was also published in Commercial Observer (April 27, 2020) and an abbreviated version was featured on SIOR Pulse (April 14, 2020).*

---

**A**s of this writing, our world is battling a global pandemic of unprecedented proportion. Already many articles have been written about the applicability of the force majeure lease clause and other potential escape hatches for each party. The outcomes of these disputes may be resolved by the courts in months and years to come, and will likely depend on specific language in those clauses. Rather than address those various opinions and predictions, we think that more practical and sensible approaches should be considered by landlords and tenants at this time. Here are some suggestions:

**1. Communication is Key:** This unusual situation creates the perfect opportunity for landlords and tenants to work together to minimize pain and both parties to survive. Frequent and forthright communications are essential. Each party should regularly assess and communicate with the

other what is happening which might impact their ability to perform under the lease. A thoughtful and practiced SIOR industrial or office broker can play an important role.

**2. Keep the Landlord/Tenant Relationship Intact:** A bad situation will become worse if one party seeks to invoke lease provisions and take advantage of the other party. Accordingly, the parties should consider creative approaches to “minimizing the pain” including rent deferral or “holidays” until things settle down; rent reduction with specific terms and time periods; CAM only payments; and applying security deposits to rent payments without replenishment requirement, all can be considered.

**3. Consider the Social Distancing Guidelines’ Impact on Tenant Obligations and Government Approvals:** Multiple states, including Illinois, have issued shelter-in-place orders, and many workers are working remotely or not at all. Not only does this adversely impact tenants’ abilities to perform their lease obligations, but it also results in government office staff cutbacks that will likely create future delays in approval processes (architectural and

engineering approvals, new build-outs, construction). Case in point: Days before this article was drafted, your broker co-author was confronted with the following clause in the LOI negotiations on a large new industrial lease:

“Subject to a fully executed lease no later than April 15, landlord shall deliver the premises no later than August 1, 2020, provided no force majeure or pandemic related delay has occurred.”

It remains to be seen how this language makes it into the final lease document, but with a pandemic already in place, the delivery of premises on time is neither likely nor binding.

**4. Understand Insurance/Impossibility of Performance Language:** Discussions of these topics are beyond the scope of this article. However, it behooves the parties to understand the scope of their insurance coverage and communicate with their insurance carriers at an early stage in this process to minimize confusion over these terms.

---

“If the 2008 global recession is any indicator, we will get through this time.”

[As of this writing] it remains to be seen how (or if) the recently passed stimulus legislation will be implemented — and of course, when. Tenants will seek loans to meet their rent obligations which may, when the funds are applied to rent, become business grants. It therefore benefits the tenant to apply for and receive these funds, and apply the funds received to rent obligations. From the landlord's perspective, it seems only "right" that when stimulus funds are received by the tenant, that such funds are paid over to the landlord to compensate for abated rent or to meet deferred rent obligations. Alternatively, from the tenant's perspective, if a landlord likewise receives stimulus funds for lost rents (again, as a business grant applied to rents or mortgage obligations) then likewise, this should be disclosed to tenants. In brief, timely communication and transparency on both sides is key to the relationship, and there should be no double dipping by either side. Therefore, if disclosure of application for and receipt of stimulus funds are tied into the lease amendment for rent deferral or abatement, it seems to be "the right thing to do." Like no other time in our history, landlords and tenants truly are in this

together. As one industry professional recently stated, "Collaboration starts with relationships. And relationships lead to proper advice and solutions."

If the 2008 global recession is any indicator, we will get through this time. Meanwhile, parties to existing or pending lease agreements must expend creativity and extra energy and show flexibility and cooperation to ensure that their business relationships, and their businesses, are maintained. ♥

---

#### MEET THE AUTHORS

**Jim Hochman** is a partner at Schain Banks Kenny & Schwartz law firm and freelance writer. He also serves as an SIOR Course Instructor. Contact him at [jhochman@scheinbanks.com](mailto:jhochman@scheinbanks.com).

**David Liebman**, SIOR, JD, LEED Green Associate, is a managing broker at Merit Partners, LLC. Contact him at [dliebman@meritre.com](mailto:dliebman@meritre.com).

# Specializing in the Sale of Commercial Investment Property and the Sales and Leasing of Office, Industrial and Retail



**Soozie Jones Walker**  
CCIM, SIOR  
Broker/President  
[Soozie@CEVegas.com](mailto:Soozie@CEVegas.com)

**Bobbi Miracle**  
CCIM, SIOR  
Senior Vice President  
[Bobbi@CEVegas.com](mailto:Bobbi@CEVegas.com)



**60 YEARS OF PERFORMANCE  
NOT PROMISES**

**REFERRAL FEES GLADLY PAID**



**(702) 316-4500**

7219 W. Sahara, Suite #100,  
Las Vegas, NV 89117

