

PRESENTED AT

**THE UNIVERSITY OF TEXAS SCHOOL OF LAW
2020 BERNARD O. DOW LEASING INSTITUTE**

November 12, 2020

Rent Relief in the Time of Pandemic

**Michael K. Kuhn
and
Kati Orso**

Author Contact Information:

Michael K. Kuhn
Jackson Walker LLP
Houston, Texas
mkuhn@jw.com
713.752.4309

Kati Orso
Jackson Walker LLP
Austin, Texas
korso@jw.com
512.236.2236

THE UNIVERSITY OF TEXAS SCHOOL OF LAW
2020 BERNARD O. DOW LEASING INSTITUTE

Rent Relief in the Time of Pandemic

November 12, 2020

Presenters:

Michael K. Kuhn, Jackson Walker LLP, Houston, TX
Kati Orso, Jackson Walker LLP, Austin, TX

Background:

The unprecedented economic pressures brought about by the COVID-19 pandemic have forced tenants to seek rent relief from their landlords, both for the immediate circumstance and for future pandemics. We will discuss the rent relief alternatives being negotiated between tenants and landlords as well as the range of issues involved and provide practical advice on how to navigate this novel environment.

1. Landlord Checklist for Response to Tenants Requesting Pandemic Rent Relief. With the onset of the COVID-19 pandemic, commercial landlords have been flooded with rent relief requests. Here is a checklist for landlords managing these tenant requests:

A. *Assess the Type of Relief*

What is the type of rent relief that would be most effective for the tenant in question? Rent deferral or abatement? Is it better for a landlord to collect partial rent (e.g., base rent only) or is it more advantageous to defer all base rent for several months and extend the term of the lease proportionately? The landlord must analyze the financial impact each rent relief proposal has on its cash flow. It may be helpful to sort the tenants according to each tenant's viability and offer rent alternatives best suited for the ultimate viability of the property in question.

B. *Analyze Each Tenant*

Landlords should understand the financial viability of each tenant and ask for supporting financial information to verify each tenant's claims. Understanding whether and when the tenant's business is likely to recover is integral in determining the rental arrangement moving forward. For retail tenants under government mandated operating strictures, are the tenants electing to operate to the extent permitted or simply closing?

C. *What is the Tenant Doing?*

Landlords should also consider whether the tenant is helping its cause with proactive steps – such as governmental loans or grants, recovery under its business interruption insurance, non-essential employee furloughs, or other cost-saving measures. The landlord does not want to be the sole source of relief.

D. *Review Tenant's Lease Obligations*

Is the tenant in compliance with its other lease obligations, both monetary and non-monetary? Are there issues to address with the tenant beyond mere rent relief?

E. *Review Lender Issues*

Before considering whether to grant rent relief, a landlord must carefully review the mortgage loan documents, where applicable. The landlord should confirm that it is complying with its obligations under their loans. The landlord may need mortgage lender approval in order to grant rent relief to all or certain tenants.

F. *Request Confidentiality and Non-Binding Nature Agreement*

Before beginning any discussions with the tenant, a landlord should consider entering into an agreement confirming that all discussions will be confidential and will not be disclosed to any third parties (especially, other tenants in the property).

2. How are Landlords Responding to Tenant Requests for Pandemic Rent Relief?

A. *Rent Deferral:*

1. Typically, 3 to 6 months (still ongoing for some tenants)
2. Deferral may be gross Rent (including CAM/Operating Expenses) or Minimum/Base Rent only, with tenant still obligated to pay CAM/Operating Expenses
 - (i) *Variation #1:* Tenant pays a form of “Alternate Rent” – typically, a percentage (say 6%) of Gross Sales – with the balance of Minimum/Base Rent and CAM/Operating Expenses being deferred. Landlord thus receives some rental cash flow during the interim.
 - (ii) *Variation #2:* Tenant pays a percentage of Gross Sales in lieu of gross Rent for a specific period of time (typically, 3 to 6 months)
3. Deferral may be a percentage (say 50%) of gross Rent
4. Deferral without interest or late fees
5. Payback is over some near-term period, often over the 12 months of 2021
6. Tenant is obligated to make any “catch-up” payments (e.g., prior year’s reconciliation payment, any past due Rent not being deferred) as a condition to deferral

B. *Rent Abatement:*

1. Typically for those tenants who have been unable to operate in any manner (e.g., fitness center, bar)

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Rent Relief in the Time of Pandemic

Also available as part of the eCourse

[2020 Bernard O. Dow Leasing Institute eConference](#)

First appeared as part of the conference materials for the
2020 Bernard O. Dow Leasing Institute session

"Rent Relief in the Time of Pandemic"