



## Commercial Leases

### Information for Landlords Concerning the Lease and COVID-19

The COVID-19 pandemic is causing unprecedented impact and uncertainty for tenants and landlords. To address these uncertainties, Texas REALTORS® is providing answers to several frequently asked questions regarding commercial leases and the COVID-19 pandemic.

#### **Does a tenant still need to pay rent during the COVID-19 pandemic?**

Yes. There have been no laws passed or decrees that freeze rental payments. Tenants are still contractually obligated to make rent payments according to the terms of their lease.

#### **If the tenant is unable to pay his rent during this time, what are my options as a landlord?**

You may be able to set up a payment plan, waiver, or a rental forbearance for tenants who are facing financial difficulties due to the COVID-19 pandemic. The Texas REALTORS® *Commercial Lease Rent Forbearance Agreement* (TXR-2126) allows tenants who are facing financial difficulties to come to an agreement with their landlord regarding rent forbearance and a future payment plan. Tenants will be ensured they can remain in possession of the property as long as they abide by the terms of the payment plan. Landlords may want to require proof of a financial hardship before entering the rent forbearance agreement, and it will be up to the landlord whether the proof offered by the tenant is sufficient. Note: A landlord is under no legal obligation to enter into a payment plan or other modification of the lease with tenant.

#### **Can I still perform a “lockout” if the tenant does not pay rent?**

Yes. There have been no laws passed or decrees that freeze lockouts for nonpayment of rent. Any lockout must be performed in compliance with the Texas Property Code Chapter 93 and the terms of the *Commercial Lease* (TXR-2101).

#### **Have commercial evictions been put on hold statewide due to the coronavirus (COVID-19)?**

No, the Texas Supreme Court has suspended all proceedings and deadlines only for residential evictions through April 19, 2020.

Keep in mind that local governments may take actions to limit evictions that go beyond the actions taken by the Texas Supreme Court. Therefore, it is important for property

managers and landlords to continue to monitor actions taken by cities and counties relating to commercial evictions.

**Does the temporary moratorium on eviction filings and late fees under the CARES Act apply to commercial leases?**

No. The federal CARES Act provides for a 120-day moratorium on eviction filings and charging late fees for properties occupied by a tenant pursuant to a residential lease.

**Can commercial tenants refuse to allow access to the property due to fear of contracting COVID-19?**

No. Paragraph 12 of the *Commercial Lease* (TXR 2101) states that landlords may enter the leased premises for any reasonable purpose including repairs, maintenance, and showing the leased premises to prospective tenants or purchasers.

However, to ensure health and safety and to reduce property owners' potential liability, landlords or property managers may want to screen for coronavirus exposure anyone wishing to view the property. If implementing a screening process, remember to apply the screening process uniformly to everyone. Property managers should also encourage property owners to speak to their own risk advisors or attorneys on these matters related to COVID-19.

**Economic Assistance under the CARES Act**

To help small businesses dealing with financial challenges during the COVID-19 pandemic, the federal government has taken emergency action through the CARES Act to provide economic aid to business owners. The act dramatically increased the role of the Small Business Administration (SBA) to help small businesses retain employees, meet payroll, and pay for business expenses like rent and utilities.

Commercial tenants may be eligible to receive economic assistance that can be used to pay rent under their commercial lease. Landlords should inform commercial tenants facing financial difficulties of two programs established by the CARES Act:

- **Emergency Economic Injury Disaster Loan (EIDL) Grants (Section 1110)**
- **SBA 7(a) Payroll Protection Program (Section. 1102 & 1106)**

For additional information about these programs, visit the SBA website at <https://covid19relief.sba.gov>.