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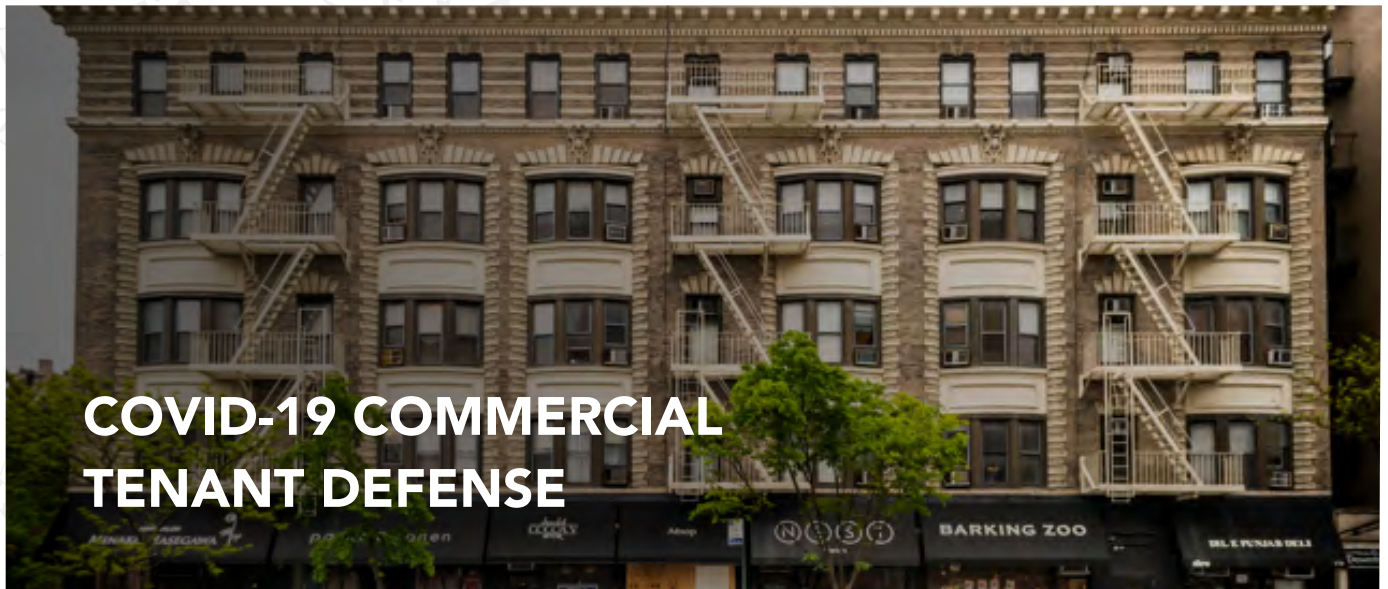
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KHURDAYAN

# COVID-19 Commercial Tenant Defense

[Dilendorf.com](http://Dilendorf.com)

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## COVID-19 COMMERCIAL TENANT DEFENSE

Dilendorf Khurdayan provides assistance to corporate offices, restaurants, clinics, retailers, and other commercial tenants facing business hardships as a result of the COVID-19 pandemic. We draw upon a wealth of experience in contract law, real property, and business transactions to represent commercial tenants in lease renegotiations and disputes. Our team assists tenants in navigating the terms of their commercial leases and offers lease-specific options, which may be available to our clients helping to keep them afloat in these trying times.

We have already achieved favorable results for our commercial tenant clients by negotiating lease modifications and obtaining rent concessions, abatements and credits from landlords due to the unforeseeable COVID-19 pandemic.

A commercial lease allocates risk between landlord and tenant in anticipation of economic stability. In national or worldwide crises, such as the COVID-19 pandemic, commercial tenants face significant challenges in meeting the terms of their leases due to the business decline. On the other hand, landlords have their respective obligations to lenders.

While tenants' significant economic difficulties on their own are not an excuse from a signed lease, unprecedented risks, concerns and measures related to the COVID-19 may be used in tenants' advantage, both in an attempt to find a reasonable solution with landlord and, if the negotiations break down, in court.



# TENANTS MAY CLAIM RELIEF UNDER THE LEASE DUE TO THE COVID-19 PANDEMIC

The uncharted waters we have entered with the COVID-19 pandemic also include the legal uncertainties related to performing obligations under commercial leases for both landlords and tenants. Landlords insist on the general rule that the parties should perform on their written contracts religiously.

However, often unbeknownst to tenants, there are valid arguments in favor of exigent relief from a commercial lease which, depending on a tenant's situation, include:

- **Casualty.** Tenant's inability to use the premises due to the COVID-19 pandemic and associated governmental orders, regulations and restrictions may trigger the "casualty" clause present in any standard commercial lease. Thus, tenants may argue that the rent should be abated for, at the very least, the period while the location was closed for business, or until the tenant's normal operations at the leased premises may resume.
- **Frustration of purpose/impossibility of performance.** These are legal doctrines which might be useful for commercial tenants. Frustration of purpose occurs when one party's contractual performance no longer holds value to the other party. For example, if a tenant no longer has the ability to use the property they are leasing for the business purposes contemplated by the lease.
- **Force majeure.** A force majeure clause may allow tenants to avoid performance for unforeseen events. Every lease is different and some force majeure clause may not apply to tenants or to the COVID-19 pandemic, so whether a tenant can invoke force majeure is heavily dependent on the specific wording included in the lease.

- **Dangerous condition of the property.** Tenant might argue that their space is unusable due to the risk of COVID-19 infection, especially when the central air conditioning, elevators and common areas are maintained by landlord. However, this argument may be hard to make in the absence of actual infection. Yet, expert opinions vary in this regard and we expect such opinions to be presented for testing in courts in the nearest future.
- **Tolling tenant's cure period and invalidity of landlord's notice of default.** Executive orders issued by the New York state and city governments not only freeze eviction proceedings but also may be interpreted as extending cure periods for nonpayment of rent and invalidating certain default notices from landlords by operation of law.
- **Commercial tenant harassment.** In New York City, commercial tenant harassment is any act or omission by a landlord that is intended to cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement. Pursuant to a recent legislative amendment, such harassment includes, among other things, threatening a commercial tenant based on the tenant's status as a business impacted by COVID-19.





# TENANTS MAY PURSUE COVID-19 RELIEF IN AND OUT OF COURT



In many cases, the best option for a commercial tenant is negotiating with their landlord for relief. Our firm has a track record of negotiation success, grounding our client's negotiations with a solid legal background. We provide a full range of services to tenants in commercial lease disputes, giving them the representation that works for their unique situation, and helping to guide their business through difficult times.

If negotiations are not successful, one of the options is bringing a legal action against the landlord for declaratory judgment (asking the court to declare the parties' rights) and other relief. As there are certain provisions in the lease, which landlord may use in its defense, and case law addressing COVID-19 tenant emergencies has not yet been developed by courts, litigation will involve novel arguments, which may or may not be accepted by courts. But the same grey area may put additional pressure on landlords to settle the dispute.

We address each commercial tenant's matter individually and help our clients to carefully evaluate business considerations against potential risks presented by each option.

# OUR TEAM



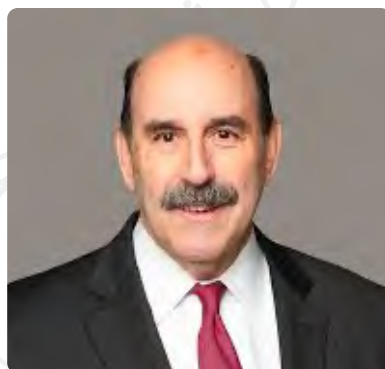
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