



## Retail Lease Rent Deferrals and Reductions in Response to the Current Economic Downturn

In these tough economic times, many retail tenants are requesting reductions in rent to relieve financial pressure on their businesses so that they can remain open and profitable. Their main argument is that the rent that they originally agreed to pay in a strong economic market is unrealistic in today's economic environment. Retail landlords, on the other hand, do not want to have empty stores in their shopping centers, which may give other tenants the right to pay reduced rent or even terminate their respective leases. As a result, many landlords are entertaining these requests for rent reductions.

### "To The Point"

In this issue of "To The Point" we are featuring attorneys from our dynamic Real Estate, Business & Finance Group. They are knowledgeable professionals who handle varied and complex real estate transactions with great skill. We hope you have an opportunity to get to know them.



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From a landlord's perspective, the best approach is a rent deferral instead of a rent reduction. With a rent deferral, the rent is initially reduced and, at some point in the future, the rent will be increased so that the landlord can recover the decrease in rent. If that approach is not agreeable, the landlord may have to grant a rent abatement or reduction for a certain period of time without recovering the decrease in rent in the future. Regardless of the concession, the landlord should protect its interests by having:

- The right to use any security deposit to offset the deferred or reduced rent;
- The right to participate in any profit being received by the tenant during any rent deferral or reduction period (if the tenant has not already agreed to do so, the tenant should pay the landlord a percentage of its gross sales);
- The tenant waive any rights that it has in the lease to terminate the lease or pay even less rent if the occupancy level of the shopping center is reduced;
- The tenant be obligated to remain open for business in the premises in a continuous manner so as to maximize its gross sales;
- The tenant's right to pay the deferred or reduced rent terminate in the event the tenant breaches any of the terms of the lease; and
- The right to terminate the lease in the event the landlord is able to find another tenant for the premises that is willing to pay the full rental amount. If the tenant will not agree to such a termination provision, then the compromise could be that if the landlord delivers a termination notice, then the tenant must agree either to pay full rent under the lease or agree to such termination.

Working together, a landlord and a tenant should be able to negotiate either a rent deferral or a reduction in rent to keep the tenant in business and keep the property occupied, which will assist both parties in weathering this difficult economy.