



**TAKEROOT  
JUSTICE**

**VOLS**  
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Your small business, like many in New York City, may be suffering economically due to the COVID-19 virus. There are many rapidly-evolving lists of resources available for your business, such as [one from United for Small Business NYC](#), [another from the City's Department of Small Business Services](#), [this one from the federal government](#), and [this one from Start Small Think Big](#). As government responds at a federal, state, and city level, we hope that the resources available will grow.

As a small business, you may be encountering issues related to your commercial lease or paying rent. This document, put together by New York City's Commercial Lease Assistance Program, is designed to address some legal questions related to commercial leases. In general, however, your legal relationship with your landlord is governed by the terms of your commercial lease. We recommend consulting with a lawyer whenever possible. If you are a small, non-franchise business in New York City and are income qualified, you may be eligible for free legal assistance through the Commercial Lease Assistance Program. You can contact the Commercial Lease Assistance Program at [kross@bka.org](mailto:kross@bka.org) or 718-487-2361.

While we will endeavor to update this guide as often as possible, the landscape of COVID-19-related commercial lease issues is rapidly changing as the public health and policy response evolves. The information is current as of the date at the bottom of the page.

### **Do all businesses have to remain closed?**

Governor Cuomo has ordered that all *non-essential businesses* work remotely or close. [This guidance](#) may help you to determine whether your business is considered essential; it was last updated on April 9, 2020. Grocery and convenience stores, laundromats, auto repair, and childcare, for example, are all considered essential, as are restaurants and bars--but only for takeout and delivery. These are not the only businesses that can stay open, so we recommend consulting the guidance document. If you believe your business is an essential business that needs to stay open, but it is not listed in the order, you can apply for an exemption [here](#).

There are some situations in which a business that is not considered essential can continue to operate: if work can be done by a person by themselves. Specifically, this work is clearly permitted now:

- delivery for orders placed remotely via phone or online at non-essential retail establishments; provided, however, that only one employee is physically present at the business location to fulfill orders; and

- interior or exterior construction work that is being completed by a single worker who is the sole employee/worker on the job site.

Other work that can be done by a single worker on a job site may also be allowed, but there is no clear guidance about that from the state.

### **Is there any money a business can access while closed or business is slow?**

You may be eligible for some financial relief through government programs. The federal government is offering low-interest loans through the [Paycheck Protection Program](#) (“PPP”) (part of which may be forgivable) and the [Economic Injury Disaster Loan Program](#) (“EIDL”). There are many online resources about these federal programs, including [this explainer](#). If you can’t get a PPP or EIDL loan, you may be eligible for the [New York Forward Loan Fund](#), which you can pre-apply for now, though loans may not be issued until New York City reopens. While the City previously offered grant and loan programs, those programs are now closed to new applications. There are also other private relief funds.

### **I heard that New York State issued a moratorium on evictions due to COVID-19. What does this mean?**

- Governor Cuomo has issued a [moratorium on evictions](#), including commercial evictions, for the time being, and has also halted all but essential matters in court. This means that if you have a case already filed against you, the courts have been instructed to put it on hold. No judgments will be issued and no evictions actually executed by the Sheriff’s office in any ongoing case for 90 days (until June 19, 2020, if the order is not extended).
  - In New York City, all city marshals have been notified that they can not execute any pre-existing warrants. If they attempt to violate this, please report this activity by calling the City’s Department of Investigation (DOI) Bureau of City Marshals at 212-825-5953.
- Courts cannot issue an eviction warrant to remove your business from your space for now.
- On March 15, 2020, all courts in New York State were [instructed by the Office of Court Administration to stop accepting new filings](#) for evictions and non-payment cases “until further notice.”
- You most likely still need to pay your rent and otherwise comply with other obligations in your lease.
- If you fall behind on rent, your landlord may be able to file a new case against you in court whenever courts start accepting new filings, whether seeking to evict you or for the money you owe.
  - Courts may start accepting new filings some time soon, or it could be a few months. No one knows yet. [But the restrictions on filing new non-essential matters and on new filings in existing non-essential cases remains in effect for now](#). Whether a case a landlord tried to file to get unpaid rent would be considered essential by a court is not clear: it could be if the landlord claims it needs the money to keep the building safe for tenants.
  - As of April 13, 2020, there is an [on-going campaign](#) asking for a rent moratorium that would include rent on commercial spaces but that has not been successful. A [bill](#) has been introduced to cancel rents for 90 days but is not yet law.

- If, however, you have gotten or do get a document saying you need to appear in court or file a response in a certain number of days, you most likely do not need to appear on that date.
- If your landlord sends you a notice saying you are behind on rent, we recommend that you seek legal assistance, even though the proceedings will be delayed.

**My landlord has locked me out of my space or is threatening to do so. What should I do?**

- Depending on the language of your lease, your landlord might have the right of “self help” if you do not pay your rent or if you otherwise breach your lease.
- However, by locking you out or otherwise taking action on their own to block you from accessing your space, your landlord may be violating New York City’s Non-Residential Tenant Harassment Law. This law bars landlords from locking out a commercial tenant, removing a tenant’s personal property, or taking certain other specified actions for the purpose of having the tenant vacate the property or otherwise waive their rights under the lease. Your landlord could have to pay a penalty of up to \$50,000 for violating this law. Pointing this out to your landlord could be a powerful argument to help you access your space again.
- If your landlord wrongfully evicts you by locking you out or another method without going to court, they could be liable for three times the amount of damages you incur. Pointing this out to your landlord could be a powerful argument to help you access your space again.
- Seek help from a lawyer to understand your options, including potentially through the Commercial Lease Assistance Program at [kross@bka.org](mailto:kross@bka.org) or 718-487-2361.

**Is there anything like suspension of rent payments going on right now?**

- At this time, there is no suspension of rent policy at any level of government.
- The policy landscape is evolving rapidly, so it is possible that could change. We will update this document if a new policy comes into place.

**Is there any assistance from anywhere to help me pay my rent?**

- At this time, there is no direct rent payment assistance available to small businesses.
- You may, however, be eligible for a [low-interest EIDL loan from the federal government](#), and rent payments you make with money from the Paycheck Protection Program may be forgivable, as long as at least 75% of the money from the PPP is used on payroll. The policy landscape is evolving rapidly, so it is possible that could change. We will update this document if a new policy comes into place.

**-Do I still have to pay my rent even though the federal, state, and city governments have declared a state of emergency?**

**-Do I still have to pay my rent even though the City says I have to close my business or seriously curtail my operations?**

**-I am able to operate my business remotely, but I’m suffering a severe downturn in business due to the economic impact of COVID-19. Do I still have to pay my rent?**

- You are most likely still legally obligated to pay rent, unless there is a [change in the law](#). In general, a formally-declared state of emergency, a government order to close your business, and/or an economic downturn do not excuse contractual obligations.
- If you are unable to pay rent, your landlord cannot start a proceeding in court to evict you right now because the courts are not accepting new cases that are not emergencies but can seek to get the back rent and/or evict you in the future, unless there is a [change in the law](#).
- You may be eligible for a [low-interest loan from the federal government](#).
- Small businesses throughout the City and across the country are currently facing or will be facing issues paying their rent because of COVID-19, and landlords are aware of this. While you may still be legally obligated to pay your rent, you may be able to negotiate with your landlord to pay a reduced rent or no rent for a period of time. We have included some tips on how to do so below.
- Seek help from a lawyer to understand your options, including potentially through the Commercial Lease Assistance Program at [kross@bka.org](mailto:kross@bka.org) or 718-487-2361.

**I can't pay rent and can't reach my landlord. Should I send them a letter explaining? Is that enough to forestall an eviction in the future?**

- If you are unable to reach your landlord in the way you normally reach them, we recommend reaching out to them in additional ways, whether via phone, email, or mail.
- Unfortunately, simply alerting your landlord to the fact that you can't pay rent right now won't be enough to forestall an eviction once the eviction moratorium is lifted and courts reopen to normal functions.

**My lease requires me to pay real estate taxes and utilities. Do I still have to make these payments?**

- As of April 13, 2020, you most likely still need to pay any real estate taxes and utilities you are responsible for under your lease.
- As with rent obligations, you may be able to negotiate your obligation to pay real estate taxes with your landlord.
- If you pay utilities directly to your landlord, you may be able to negotiate your obligation to pay them with your landlord. If you pay your utilities directly to a utility company, like Con-Ed, you may be able to negotiate a payment plan with the utility company.
- Con-Ed has suspended utility shut-offs during the emergency, and we believe (but are not 100% sure) that this applies to business accounts as well as residential accounts.
- Seek help from a lawyer to understand your options, including potentially through the Commercial Lease Assistance Program at [kross@bka.org](mailto:kross@bka.org) or 718-487-2361.

**Even if my landlord is open to negotiating, I don't think I can survive the COVID-19 crisis. Are penalties for early termination waived?**

- There is currently no policy in effect that waives any penalties for terminating a commercial lease early.
- If your landlord is willing to negotiate, they may be willing to waive or reduce any penalties that might otherwise be applicable for terminating your lease early.
- You should consider whether you signed your lease in your personal capacity or in your entity name (if you have an LLC or corporation, for example).

- Even if you signed the lease under your entity’s name, you should look at whether you signed a personal guaranty. Your guaranty might contain a “good guy” clause, which typically says that if you provide notice a certain number of days in advance and vacate the space, you will not be personally liable for rent due for the remainder of the lease.
- Seek help from a lawyer to understand your options, including potentially through the Commercial Lease Assistance Program at [kross@bka.org](mailto:kross@bka.org) or 718-487-2361.

**I’ve heard that there may be a part of my lease that says that I don’t have to pay rent because of a government action, disaster, or something like that. Is this true? How do I find that clause?**

- It is important to remember that every lease is different. Some leases do have clauses in them that address things that happen that are outside the landlord and tenant’s control.
- Some leases contain what is legally called a “force majeure” clause. It could also be titled something else, such as “inability to perform.”
- These contractual clauses are ordinarily construed narrowly, so it is unlikely that you do not have to pay rent as a result of this type of clause.
- If this clause in your lease says that the tenant is excused from performance because that party is unable to fulfill its obligations under the lease because of a pandemic or epidemic, then you may not have to pay rent.
- Many of these clauses only give the landlord an exception to performing its obligations under the lease, so it is important to see if your clause says that it applies to either party or specifically to the tenant.
- We recommend you consult with a lawyer to review your lease for this type of provision, if possible, including through the Commercial Lease Assistance Program at [kross@bka.org](mailto:kross@bka.org) or 718-487-2361.

**Is there anything right now beyond the moratorium on evictions that compels my landlord to act differently?**

- Aside from court closures and the eviction moratorium, there is not currently anything compelling your landlord from acting differently as a legal matter.
- Landlords are, however, aware of the COVID-19 crisis and its impact on small businesses. As a practical matter, this may cause your landlord to act differently.

**I have a stipulation plan now with my landlord, but I can’t meet those requirements. What can I do?**

- Your landlord may be open to renegotiating the terms of the stipulation given the current circumstances. We have included some suggestions for approaching your landlord to renegotiate below.
- Because courts are currently closed to all but essential functions and the eviction moratorium is in place, your landlord will not be able to go to court to enforce the stipulation. Your landlord could, however, still take you to court once courts reopen fully (though they could first open remotely) and the eviction moratorium is lifted.

**I got a notice from the court before the courts closed. What is the status of that? Should I try approaching my landlord on the issue? And what happens when the court reopens?**

- Any court date or deadline to respond set in the notice will be delayed until the courts reopen fully (though they could first open remotely).
- It may be a good idea to approach your landlord to try to resolve the issue without going to court. We have included some suggestions for approaching your landlord to negotiate below.
- When the courts reopen, your court case will be able to move forward. We do not know at this time how backlogged the courts will be or how delayed your case will be.

**I signed a commercial lease that starts April 1, May 1, or at a time when COVID-19 may still be causing issues for small businesses. What should I do?**

- As a legal matter, your lease will probably still begin on the date that it is supposed to start.
- It may be possible to negotiate with your landlord to have the lease start at a later date, to negotiate a rent concession period if you do not already have one in your lease, to negotiate a longer rent concession period if you already have one, or to get out of the lease entirely.

**I saw a great space and was going to move forward with negotiations, but then COVID-19 hit. I don't want to lose the space, but I don't want to move forward and end up having to pay rent while I am not able to do business. Is there a way I can negotiate some sort of hold on the space?**

- You may still be able to negotiate to begin a lease at a later date. The lease could start on a specified date in the future or be tied to a particular change related to the COVID-19 crisis, such as when the State lifts the state of emergency, allows non-essential businesses to reopen, or allows restaurants to operate fully.
- Because the current economic situation is volatile, you might want to be cautious with signing a legally enforceable lease. One alternative is to sign what's called a "term sheet" or "letter of intent." This type of document sets forth the main business terms of the lease, such as the monthly rent (and any escalations), the length of the lease, utilities, and the tenant's share of the real estate tax increase. The document states the intentions of the parties to negotiate a lease, and thus might be enough for your landlord to take the property off the market, but usually is not legally enforceable in case you want to get out of the deal as conditions evolve.
- As a practical matter, it will be very difficult for a landlord to find a new tenant at this time, so your prospective landlord may be incentivized to tie the start date of the lease to a particular COVID-19-related event or to agree to sign a term sheet to take the space off the market.

**I think my landlord is treating me differently because of my race, national origin, illness, or perceived illness. What can I do about this?**

- Discrimination based on any of these characteristics (including based on whether you have or might have COVID), is illegal in any context under the New York City Human Rights Law. If you think your landlord is discriminating, you can call 311 and report them to the NYC Human Rights Commission.

- Under New York City’s commercial tenant harassment law, it is unlawful for a landlord or landlord’s agent to threaten you based on your actual or perceived race, national origin, gender, alienage or citizenship status, or disability *with the goal of having you vacate your space or otherwise attempt to have you waive your rights under your lease*. If your landlord does that, you can take them to court (when courts re-open for non-emergency matters) and ask the court to fine them.

**My lease is set to expire within the next 6 months, and I am not sure if I want to renew it. What are my options during this health crisis?**

- Even if you don’t renew your lease, you can continue to be a month-to-month tenant as long as you pay the rent under your most recent lease and your landlord accepts it. If you do not want to commit to a particular time period for keeping your business open, this is a way to do that.
- If you have a renewal right (also called an option) in your current lease, check what the contractual requirements are for exercising it (such as when you need to provide notice) and make your decision based on your business needs and conversations with your landlord.
- If you don’t have a renewal right in your current lease, and you want the security of knowing that you can stay in the space for a specific amount of time, you will have to negotiate a lease renewal with your landlord.
- Seek help from a lawyer to understand your options, including potentially through the Commercial Lease Assistance Program at [kross@bka.org](mailto:kross@bka.org) or 718-487-2361.

**I want to talk to my landlord about paying less rent or renegotiating my lease? Do you have any suggestions?**

- We recommend talking to your landlord about these issues. While some landlords may not be sympathetic to your concerns, the vast majority will at least be aware of the difficulties small businesses are, or will be, facing due to COVID-19.
- Consider pointing out to your landlord, as applicable, that:
  - You have been a good tenant based on a longstanding tenancy, record of on-time rent payments, or other applicable circumstances, and want to continue to be. Your business, however, is being seriously hurt by COVID-19.
  - Due to the state of emergency, your customers have not been spending money at your business, leading to less revenue and harming your ability to pay rent.
  - The City has mandated that certain types of businesses close entirely or functionally, lessening your income and harming your ability to pay rent.
  - The State has mandated that all non-essential businesses work remotely or close, lessening productivity and thereby revenue and harming your ability to pay rent.
  - You have applied for financial relief (whether from the government or from a private organization) but have not yet received any assistance.
  - If you are in a mixed-use building, some banks in New York State are waiving mortgage payments for 90 days based on financial hardship. Your landlord may be able to get some financial relief, even if only temporary, based on this measure. Regardless, your landlord may be able to negotiate with their lender.

- o The political response to COVID-19 is rapidly evolving. It may be possible that the government will provide some additional financial relief to property owners and/or small businesses.
- o You want to forego paying rent for X number of months but have your lease extended by the X months. This way, your landlord will ultimately receive the rent payments. Alternatively, if you think you would be able to afford it, you could propose that any rent you do not pay while the pandemic is ongoing be distributed throughout the remainder of your lease term.
- o It will be difficult for your landlord to find a new tenant to move in immediately or soon, particularly if a hypothetical new tenant were planning to operate a certain kind of business.
- o If your landlord wants to start litigation, any court processes will be greatly delayed, so it may be beneficial to both you and your landlord to come to an agreement now without going to court.
- If you are able to come to an agreement with your landlord, it is a good idea to get the agreement in writing and have it be signed by both you and your landlord. It is also helpful to have other forms of writing, such as email. Some landlords may be reluctant to put anything in writing, however.

**How can I get legal help related to my commercial lease?**

- If you are a non-franchise small business owner in New York City and meet certain income requirements, you may be able to get help through the Commercial Lease Assistance (“CLA”) Program.
- You can contact the Commercial Lease Assistance Program at [kross@bka.org](mailto:kross@bka.org) or 718-487-2361.
- You can also fill out an application through the City’s [Department of Small Business Services](#).

**What types of issues can the Commercial Lease Assistance Program help with?**

- Ordinarily the CLA Program assists with most commercial lease issues that don’t involve going to court. For example, we negotiate new leases and attempt to resolve disputes with landlords.
- In terms of issues that may arise related to COVID-19, we may be able to help you negotiate a modification to your lease or a payment plan if you fall behind on rent. We may also be able to review your lease to see if there are any provisions to give you any relief from your obligations under the lease. You can always contact us to see if the type of assistance you are seeking is something we can help with.

**This FAQ is not legal advice.**

**If you have any questions about a commercial lease, please contact the Commercial Lease Assistance Program at [kross@bka.org](mailto:kross@bka.org) or 718-487-2361.**