

COVID's Lasting Impacts on Commercial Lease Negotiations

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The COVID pandemic will have a lasting impact on lease negotiations from this point. Ty West, senior editor of national content at *American City Business Journals*, published an interesting article on the topic on May 3, in which he makes the following points regarding the lease terms most likely to be focused upon by landlords and tenants as a result of the pandemic:

1. **Force Majeure.** This was the go-to clause for everyone when the government shutdowns began. For the most part, they did not offer much help. Pandemics and government shutdowns will be more carefully vetted in future clauses.
2. **Condemnation.** There are already lawsuits pending around the country alleging that a government-ordered shutdown of a business is tantamount to a government taking. This perspective will be used in lease condemnation provisions to deal with government-ordered shutdowns in the future, and their impact on a tenant's liability to continue paying rent, CAM, and other lease related charges if its business is closed involuntarily—or if a portion of the business is closed (e.g., only 25% of capacity is allowed).
3. **Use Clauses.** Obviously, the more expansive a use provision is in the lease, the harder it would be for the tenant to claim that its use of the premises has been “taken by the government.”
4. **Physical Enhancements.** Finally, tenants are going to want to require that enhanced air filters, non-contact switches, and other pandemic-related physical aspects of the premises be furnished.

These are all matters to be included in lease negotiations going forward.

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