



COVID-19 COMMERCIAL LEASING CODE OF CONDUCT

FREQUENTLY ASKED QUESTIONS

The Government recently introduced the Mandatory Commercial Tenancies Code (Code) to guide negotiations between tenants and landlords during COVID-19.

The purpose is for parties to share the financial risk and cashflow impact during the pandemic period. Landlords must agree to a tailored and individual agreement with each particular tenant, taking into account their particular circumstances on a case-by-case basis.

Who does the Code apply to?

All leasing arrangements during the COVID-19 pandemic period where:

- The tenant is in financial distress. This means their business revenue is suffering and they cannot meet their financial or contractual obligations. If they are eligible for JobKeeper program they will meet this criteria.
- The Tenant has a turnover of \$50m or less.

Can a landlord terminate the lease for not paying rent?

No - there has been a 6-month ban on evictions. A landlord also cannot charge interest or fees on unpaid rent.

Can a landlord use the tenant's security deposit?

No - the landlord cannot use any bank guarantee or security deposit paid by the tenant to cover unpaid rent.

Can a landlord increase rent during this time?

No - there has been a freeze on rent.

What if a tenant has reduced opening hours or stopped trading?

A landlord cannot penalise a tenant under a lease for reducing their trading hours or closing.

Can a tenant stop complying with the lease?

No – other than what they negotiate with the landlord e.g. rent relief.

Can I get rent relief?

Yes if you are eligible under the Code.

How much rent relief can a tenant get?

Landlords must reduce rent in proportion to the tenant's reduction in trade during the COVID-19 period or a reasonable period afterwards. For example, if the tenant's trade has reduced by 50%, the landlord must offer rent relief of 50%. A landlord can ask for information to support this reduction and a tenant must be open and transparent.

What type of rent relief can landlords offer?

Landlords can offer rent relief via a combination of two methods:

- Rent waiver – where the tenant does not have to pay rent and the landlord cannot recover it later. This must make up at least 50% of the total rent relief.

- Rent deferral – where the tenant does not have to pay rent at that current time, but must be repaid at a later date over a certain period of time. This must be spread out over the rest of the lease term or 24 months (whichever is longer). However, the parties can agree to another time period to spread this out over, for example 12 months.

EXAMPLE

- Amy currently pays \$2,000 a month in rent. Her lease will expire in June 2023.
- Amy's revenue has decreased by 50%. Amy and the Landlord therefore agree to 50% rent relief commencing 1 March 2020 and ending 30 August 2020. This means her rent is reduced to \$1,000 per month during this time.
- Half of this rent, being \$500, is waived.
- The other half of the rent relief, being \$500, is deferred. Over 6 months this is a total of \$3,000. Amy and the Landlord agree that this must be repaid in equal monthly instalments over 6 months, commencing 1 September 2020.
- This means that Amy will need to pay an additional \$500 per month on top of her rent from 1 September 2020 until the \$3,000 is repaid in full.

What if the landlord receives a reduction in their fees, such as mortgage relief?

The landlord should pass on to the tenant any: reduction in outgoings such as land tax, council rates, insurance; or assistance from the bank such as a deferral of loan payments.

Does the tenant have to pay outgoings?

Where the tenant is not trading, landlords should try to waive recovery of outgoings or other expenses. Landlords can contact their providers to request a fee reduction or waiver.

Can the lease be extended to account for this period?

Landlords should offer tenants the chance to extend their lease for the period of the rent reduction. For example, if landlords offer a rent reduction for 6 months, they can offer the tenant an additional 6-month period on their lease.

What if the landlord and tenant can't reach an agreement?

If the parties cannot reach an agreement, you should contact the Small Business Commissioner. The parties can then participate in mediation to resolve the dispute.

If you need any help in understanding the Code or negotiating rent relief, please don't hesitate to contact us at info@legalite.com.au

