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Commercial Leasing and COVID-19: What to Expect Next

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Landlord & Tenant Perspectives

- **Tenant**
 - Prevented from using space for intended purposes
 - Lost benefit of its bargain
- **Landlord**
 - It wasn't me!
 - Obligations to lenders, partners and taxing authorities
 - Government stimulus and support available
- **Initially Polarized Viewpoints**
 - Hard line positions
 - Moved to more collaboration

Common Arguments

- **Four (4) Corners of the Contract**
 - Force Majeure
 - Quiet Enjoyment
 - Continuous Use
 - Interruption of Services
- **Common Law Defenses**
 - Frustration of Purpose
 - Impossibility or Impracticability of Performance

Successful Modifications

- Rent Abatements & Deferrals
- Term Extensions & Reductions
- Space Surrenders
- Application of Monies Owed (e.g., Tenant Improvement Allowances)

Hot Topics in Current Lease Negotiations

- **Force Majeure**
 - Traditional vs. Mutual
 - Contemplate pandemics and governmental orders
 - Exclusions for key dates
 - Effect on rents while force majeure is in effect
- **Assignment and Subletting**
 - Broader tenant rights during forced closure
- **Continuous Use**
 - Carve-out governmentally mandated closures from caps
- **Co-Tenancy Requirements**
 - Limitations on tenant remedies for mandated closures
- **Termination Rights and Space Surrenders**
- **Security Deposits**

Landlord and Tenant Considerations

- **Landlord**
 - Increased lender scrutiny
 - Choosing the right tenant
 - Assurances of continued rent stream
- **Tenant**
 - Flexibility
 - Built-in rent adjustments during periods of forced closure

Unique Market Perspectives

- **Healthcare & Student Housing**
 - Highly regulated
 - Reasonable accommodations
- **Office**
 - Space flexibility
 - Additional Services
 - Cleaning and Decontamination
 - HVAC & Air Filtration
 - UV light filters
 - Elevators
 - Checkpoints
- **Retail**
 - Continuous Use
 - Co-Tenancy

Current Market Conditions – NYC

- **The WFH Phenomenon**
 - Who, how many and when will they return?
- **Leasing Activity**
 - Yesterday vs. today
- **“Pre vs. Post-COVID Economics”**
 - The rise of concessions
- **What’s Next?**
 - Market Forecast

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