

## Covid-19 Free Online Seminars

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**We'll start soon...**

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**COVID-19  
Leasing Issues and Solutions**

April 2020



# COVID-19 Leasing Issues and Solutions

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## Overview

- What does the lease say about the lockdown?
- Do rent and outgoings have to be paid?
- Commercial considerations
- Possible solutions

## Overview

There are generally two types of leases:

- Those with no access or force majeure clauses
- Those which are silent on lack of access

Always check the individual lease which may have been amended or have special terms.

## ADLS Leases – post 2012

### Second Schedule Clause 27.5:

- In an emergency (Covid-19 meets this definition) “a fair proportion of rent and outgoings” ceases to be payable from the date “when the tenant becomes unable to gain access to the premises to fully conduct its business” until that ends.

## Issues

- What is a fair proportion of rent and outgoings?
- What if the Tenant partially uses the premises?

## Fair Proportion – various views

- 100% rent and outgoings abatement (tenant friendly)
- Fair meaning fair to the Landlord and Tenant, e.g. 50/50
- Fair referring to the use the Tenant has of the premises – computer servers still there, storage, warehousing as examples



## Interpretation only resolved

- Arbitration under the lease or other dispute provisions
- Court decision

Penalties could apply. Government might assist Landlords or Tenants.

## Range of other “no access” clauses

- Force majeure
- Property council – rent payable where no access and Landlord uninsured
- Malls, airport etc
- Other specific leases

### Category Two

- Silent on effect of no access
- Obligation to pay rent and outgoings continues unless otherwise agreed
- Frustration of contract?

## Check Insurance for Loss of Rent or Business Interruption

- May apply only where physical damage
- Pandemics are likely excluded

## Where to:

- Talk to your Landlord or Tenant
- The commercial position is key despite what the Lease says – we are all looking to the position beyond lockdown
- A range of possible resolutions – rental and outgoings abatement over a longer term, abatements in return for an extended Lease term, reduction in payments linked to revenue fall
- Talk to your accountant, bank, other trustees and directors
- Record variations in writing

## Where to:

- If the Tenant refuses to pay, Landlord should reserve its position
- Landlord and Tenants – consider security position
- Moving environment – do not act in haste

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