



## **Construction Law: Commercial leases during the Pandemic - by C. Jaye Berger**

July 07, 2020 - Front Section



The issue of how to handle the non-payment of commercial rent in New York City, as a result of the Pandemic, is a big one. Many commercial tenants have tried the approach of asking landlords to just

“forgive” and forget a few months of unpaid rent and to wait until things improve with the economy. Some have asked to be allowed to just pay whatever they can. Most do this formally. Some just “trust” the tenant will try their best.

Governor Cuomo has extended the moratorium on evictions and foreclosures until August 20th, 2020. In addition, renters can now use their security deposit to pay their rent. While that is helpful, that would only hold things back for a few months, while the economic situation hopefully improves.

Landlords relying on having personal guaranties from tenants in a commercial lease or other rental agreement may be surprised to learn that they may be unenforceable due to a new law in New York City. It invalidates any provision by which someone other than the tenant will become liable for certain payments upon the occurrence of a default or other event. It applies through September 2020. It raises many questions and has potential loopholes, which will no doubt be litigated when the appropriate time comes.

Anyone facing these issues should seek legal counsel before agreeing to anything. Deferrals in rent must usually be paid back with strings attached.

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