

AIR CRE TOWN HALL

# Navigating Lease Contract Disputes in the Wake of Coronavirus

Friday, April 24, 2020

Presentation and Q&A Session

## TOPICS

AIR CRE Leases and how they address coronavirus issues:

- 1 **Beyond force majeure - parties rights and remedies**
- 2 **Does legal order for businesses to close mean tenants don't have to pay rent?**
- 3 **What are the remedies of landlords in collecting rent?**
- 4 **What are the consequences of non-payment of rent under the leases?**

**Q&A**



**SPEAKER**

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and legal counsel to the AIR CRE  
Contracts Committee

## **Force Majeure**

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- > AIR CRE leases**
- > Time for non-monetary obligations**
- > Completion of construction to start of lease (Paragraph 3.2)**
- > Cure by either Lessee (Paragraph 13.2) or Lessor (13.6)**

## Beyond Force Majeure

- > **Civil Code 1511, Subsection 1**
- > **Performance is “excused” if prevented or delayed by operation of law**
- > **Even if there is a stipulation that “operation of law” not be an excuse**
- > **Court cases in landlord/tenant disputes**

TOPIC 2: Does legal order for businesses to close mean tenants don't have to pay rent?

## Impact of operation of law

- > Was closure by “operation of law” or otherwise
- > Any residual uses available
- > Change of use (Paragraph 6.1)
- > What performance was affected by operation of law

## TOPIC 2: Does legal order for businesses to close mean tenants don't have to pay rent?

### What obligation is “excused”

- > **Can be closed and still pay rent**
- > **Rent abatement or deferral**
- > **Other possible legal theories**
- > **Lessee's business interruption insurance (Paragraph 8.4)**

## TOPIC 3: What are the remedies of landlords in collecting rent?

### Lessor's remedies – if any?

- > **Stay on evictions**
- > **Sue for the rent (Civil Code 1951.4); ejectment (?)**
- > **Security deposit, letter of credit, guarantors**
- > **Terminate for creating damage, waste or nuisance (Paragraph 6.1)**

## TOPIC 4: What are the consequences of non-payment of rent under the leases?

### Possible consequences of non-payment

- > Inducement recapture (Paragraph 13.3)
- > Loss of options (Paragraph 39.4)
- > Late charge (Paragraph 13.4)
- > Interest (Paragraph 13.5)

## TOPIC 4: What are the consequences of non-payment of rent under the leases?

### **Other Lessor concerns**

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- > **Lessor's rental loss insurance policy (Paragraph 8.3(b))**
- > **Impact on Lessor's maintenance obligations (Paragraph 7.2)**
- > **Denial of access to the project (Paragraph 6.3)**
- > **Quiet Possession (Paragraph 38)**

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**Q&A**