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SMALL BUSINESS COMMERCIAL LEASE RENEGOTIATION STRATEGIES FOR POST-PANDEMIC CASH FLOW SUSTAINABILITY AND RISK MITIGATION

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Abstract

The COVID-19 pandemic-induced global lockdowns of populations and businesses have resulted in significant declines in in-store consumer spending. This has created an impairment of net cash inflows for many retail businesses, especially small businesses and entrepreneurial ventures where net margins are thin. These lockdowns likewise have adversely impacted small business cash flows throughout local and global supply chains. Many of these companies have been able to reduce variable costs, but fixed costs remain. In an October 2020, Alignable Pulse Poll of 7,726 tenant small-business owners, 34% of the respondents indicated that they may be unable to pay their rents, representing one of their primary, contractual, and long-term fixed costs. State and local governments in 32 out of 50 states have provided eviction protections for commercial tenants, as have the governments in the U.K., Germany, Canada, and Mexico, among others, but those protections are limited and short-term. Small business owners are no longer able to ignore low-likelihood, high-risk events. They now need to implement financial management best practices that are critical to business resilience and sustainability, considering the COVID-19 re-shaping of the issues they will face in the near- and long-term future. This paper presents small business tenants' risk-mitigation negotiating strategies in renegotiating existing commercial space leases, focusing on lease-based cash management. Using an integrative-collaborative negotiating approach, small business owners, often finding themselves at a leverage disadvantage, can utilize key negotiating skills in developing an effective strategy in renegotiating lease terms with landlords. This study provides win-win, integrative strategies for commercial lease provisions related to the following: rent scheduling; use, assignment, and subletting clauses; relocation and cancellation clauses; payment currency; percentage rent provisions; and the leverage implications of the use of the legal doctrines of force majeure, impossibility, and frustration of purpose in negotiating commercial leases.

Author Keywords

COVID-19 pandemic, Commercial lease, Valuation, Negotiation, Cashflow

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