

“A landlord waiving rent and not getting anything in return is just not a reality:” experts sound off on pandemic’s effect on South Florida’s retail market

The pandemic could change the way commercial leases and insurance policies are structured

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Pebb Enterprises, like many commercial landlords in South Florida, is working with tenants to offer rent deferments or discounts, as retailers and small businesses struggle to pay this month’s bills.

Pebb, a Boca Raton-based commercial real estate firm, is still making its mortgage payments in April, said Chris Stewart, Pebb’s senior vice president of leasing. At the same time, the company is hearing from “a significant number of tenants” and trying to keep an open dialogue between them, he said.

“We are granting deferments, looking at each tenant and property individually,” Stewart said. “We just want to make sure they understand the situation we’re going through.” The company is sending tenants links to loan and grant programs available under the **\$2 trillion stimulus package** that was signed into law by President Trump last week.

Locally and across the country, retail stores, restaurants and bars are attempting to negotiate their rent for this month and in May. Besides Pebb, landlords like Tricera Capital and Avra Jain are talking to their **tenants to work out deals**.

Jain, speaking during a Bisnow webinar on Thursday, said she’s in the process of negotiating deals with tenants, ranging from deferment or forbearance to partial payment of rent.

“If the lenders are giving us relief, we want to pass it along to our tenants,” Jain said, later adding that, “in April, we’re going to do everything we can to make our lender obligations.”

Claudio Mekler, CEO of Miami Manager, a Sunrise-based company that owns five shopping centers in the tri-county region, told *The Real Deal* that his firm is analyzing his tenants' finances to figure out individual solutions. Mekler said they are "letting us scrutinize their business model in order to negotiate to mitigate the impact of the coronavirus crisis."

Tenants include Starbucks, Dollar Tree, CVS Pharmacy, Dick's Sporting Goods and Subway. Miami Manager invests in value-add mid-size shopping centers using private equity from investors in Latin America.

"We have already spoken with many of the tenants and, in some cases, we decided that they do have the financial backing to pay full rent in April. In other instances, we have worked out agreements that benefit the tenant, my investors and our lenders," Mekler said. "For example, for a tenant who had paid us six months of rent in advance, we have reduced his April rent by 50 percent."

Mekler is also asking one lender to release a reserve that's typically used to pay broker commissions and tenant improvement concessions, and instead use it to cover rent that will not be paid by tenants.

Commercial brokers Tony Arellano and Devlin Marinoff of Dwtwn Realty Advisors emphasized that property owners are beholden to their lenders in many cases. Those with commercial mortgage backed securities (**CMBS**) loans, don't have that flexibility.

"If tenants think they're just not going to pay rent, it's mechanically not possible.... A landlord waiving rent and not getting anything in return is just not a reality," Arellano said.

They anticipate that many landlords will urge their tenants to apply for loan and grant programs to pay their rent while their businesses are closed or limited, as is the case for restaurants and bars, which can only operate for take-out and delivery.

"If a mortgage said you cannot give concessions to your tenant, you have to go back to your banker," Arellano added.

Marinoff said that the effect on property values won't be known until the pandemic is over and businesses have started to recover. "When the smoke clears, there will be plenty of opportunity. We won't know until it's over," he added.

Some major tenants, like the Cheesecake Factory, have said they would not be able to pay April rent.

And some landlords, like Taubman Centers, owner of The Gardens Mall in Palm Beach Gardens and Dolphin Mall in Sweetwater, are requiring payment from their tenants.

Scott Sherman of Tricera Capital said during the Bisnow panel that he's offering his tenants rent deferral in April to give them "breathing room." Tricera will add that month to the end of their lease term. "Without our tenants, we have dark buildings," he said.

Tenants first need to look at their leases and insurance policies to see if they have a legal basis for rent abatement, said attorney Jason Kellogg of Levine Kellogg Lehman Schneider + Grossman.

He pointed to one legal argument made in Louisiana, where a lawyer argued that the presence of Covid-19 in a retail establishment could count as physical damage

Kellogg and others expect that the pandemic will change how leases and insurance policies are written, similar to what happened with the Zika outbreak in 2015 and the SARS outbreak in the early 2000s.

"This is going to be a complete game changer. Everyone is going to start putting viruses, pandemics, epidemics [**in contracts**]. Any leases I write or edit are going to include this because no one is going to forget this," he said.

Attorney Josh Migdal, co-founder and partner at Mark Migdal & Hayden, is hearing from both landlords and tenants.

"The tenants are contacting us to find out whether or not they have any legal recourse or basis to absolve them from having to make payment. The landlords are calling us to find out whether or not the tenants have any basis," he said. "They're also asking us to look at

their loan documents to see what they can do related to making payments to their lender. This is a cascade of litigation or liquidity issues.”

A number of landlords will be forced to sue to evict tenants. In some cases, Midgal said, they’ll use litigation to bring their tenants to the table to work things out. In others, the pandemic will weed out tenants that were already struggling.

“The reality is tenants don’t want to go out of business and not have space, and landlords don’t want to have vacant space,” he said. “No one wants to go to a shopping center that is empty.”

Landlords may require or ask their tenants to sign a covenant that the money they receive will be used for rent, said attorney Steve Silverman, a shareholder at Kluger, Kaplan, Silverman, Katzen and Levine.

Tenants typically have grace periods between seven and 14 days to make their rent payments, he said.

“You don’t want landlords exercising their eviction options. You want to avoid the cost of that litigation,” Silverman said. “Hopefully a lot of these issues will be worked out. I anticipate that many, many of them won’t be.”

Some businesses have already decided they won’t re-open. Cracker Barrel said last week that it won’t save its Punch Bowl Social chain, according to news reports. The concept has a **location in Wynwood** that had just opened.

A majority of Wynwood’s 400 businesses are locally owned. The neighborhood was ground zero for the **Zika outbreak** a few years ago.

“We were literally shut down for the better part of two months,” said Albert Garcia, chair of the Wynwood Business Improvement District. “We know from past experience that there are going to be businesses that may not survive.”

Daniel Odess, president of insurance firm GlobalPro, said that his company was able to recover losses for commercial property owners, including restaurants and hotels, due to

the Zika outbreak. Odess said the chemicals used to combat the infected mosquitoes had corrosive properties, which caused physical damage.

He said coronavirus could cause physical damage because it sits on surfaces for extended periods of time. He compared it to the soot left from a fire. “That is covered by insurance.”

In Wynwood, Garcia said the BID is sending out daily emails to its members, sharing information on what **government-ordered closures** and programs are available to businesses and employees impacted by the pandemic.

Carlos Saez, COO and co-owner of Native Management, the property management arm of Native Realty in Fort Lauderdale, which manages 10 properties in **Broward County**, agreed that most tenants want their rent abated. He’s sending them a PDF prepared by the U.S. Chamber of Commerce that outlines who is eligible for the Coronavirus Aid, Relief, and Economic Security (CARES) Act, how much money they’re eligible for, when a loan can be forgiven, and more.

“Every landlord, property manager and building owner is trembling right now. Usually the landlords and building owners are small business owners themselves,” Saez said. “This is all still a very new and fluid situation.”