

What restaurants, retailers should know as hurricane season ramps up

By Matthew Arrojas

Hurricane season is intensifying, and with that, so is the threat that a major storm could wreak havoc on South Florida businesses.

Far too often, business owners don't know what they are liable to fix until a hurricane has already caused damage, said **Philippe Lieberman**, shareholder at Miami-based Kluger Kaplan PL. That's why he and fellow shareholder **Marko Cerenko** recommend restaurant and retail managers take some time to review their leases now so they aren't blindsided once a storm hits.

There may still be time to rework leases or redefine insurance policies, they said.

Here are some of the things Lieberman and Cerenko recommend business owners review in the coming weeks:

What's some general advice you have for business owners during hurricane season?

Lieberman: The first thing I would advise any client – either landlord or tenant – to prepare for with hurricanes is to make sure you know what your lease provides. It may provide that the responsibility is on the landlord or on the tenant to restore and safeguard the property; it all depends on what kind of lease you have. Know what you have, and know what you want to have, because all of these things are typically negotiable.

Who is generally responsible for repairing damages when a hurricane hits?

Lieberman: It depends on what kind of lease it is and the property. In the situation of restaurants or retail establishments, I have found that most often the property is the responsibility of the landlord, and the contents inside each space are the responsibility of the tenants. If you're looking at a small mom-and-pop type of establishment, the landlord may not want the responsibility on the tenant because the tenant may not be able to afford repairs on their own.

At what point do tenants qualify for rent abatement?

Cerenko: It's very important for the tenant and the landlord to have provisions within the lease that clearly define what happens in the event of a hurricane and what happens if the premises are completely or partially destroyed, or if the power's out for something like two weeks. Under any of these types of situations, when does the tenant get rent abatement? I represented a landlord recently in that type of situation where their premises was partially destroyed and the provision pertaining to [rent abatement] was not clearly defined, so there was a lot of back and forth. As a result, both amended the lease agreement to provide more clearly defined rules.

What defines clarity in this subject?

Cerenko: What I'm talking about more is from a damage perspective. Are you able to use the premises? If you're not able, then obviously that would be different than if you could access and use it for the purposes that you signed the lease for. It's not usually too granular, though.

At what point can you renegotiate a lease if you don't like the current language in it?

Lieberman: Once you're in a lease, you're in it. It all depends upon the incentive the other side has to renegotiate. It could be a scenario where the landlord agrees to amend the contract for increased rent or for a longer or shorter lease length. It's just a question of incentive, but in the absence of two willing parties, you have to live by the contract.

Other than rent abatement, what other protections do tenants have in case of considerable property damage?

Lieberman: Imagine a premises that is destroyed and it would take six months to repair. It may be nice if there's an abatement of rent, but if a tenant cannot terminate the lease... what's the tenant supposed to do for the next six months? You want to make sure you understand your rights and obligations with regards to the ability to continue in the tenancy or terminate it.

Cerenko: The follow-up is: Is it even possible to bring [the property] back to its original state? Sometimes you have provisions that say you can terminate if the landlord can't fix the premises within six months. That's why the really sophisticated leases are longer and more granular than your typical mom-and-pop, because they try to contract for a lot of these "What ifs."