

Will COVID-19 Trigger a Downfall Domino Effect for Retail Closings?

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It has been over a month since Governor Tom Wolf's stay-at-home order was issued and people have resorted to online shopping to satisfy everything from their everyday essentials to activities to keep their family sane during shelter-in-place. The COVID-19 pandemic has provided a rapid incentive to begin shopping even more online, and the brick-and-mortar retail industry [could see the effects for years to come](#).

For example, increased online shopping and the shutdown of certain retail stores may compel retail tenants to exercise their rights under a co-tenancy clause in their leases. Retail leases for malls and anchored shopping centers may include a co-tenancy clause, which protects smaller tenants within the space. In a department-store-anchored shopping center, other tenants like a deli and a hair salon may have a co-tenancy clause that allows them to reduce rent if the department store "anchor" closes for a certain period of time, and gives the landlord a period of time to cure the closure before tenants can terminate the lease.

There could also be co-tenancy clauses for "like tenants," which allows the tenant the same remedies if tenants of similar stature are replaced with lower-rated tenants. Co-tenancy clauses are often included, and allow for remedies, because tenants depend on foot traffic for a robust business to help pay their rents. When a large anchor closes, or the other tenants within the shopping center do not bring in as much foot traffic, the tenant is no longer in the situation they originally contemplated when they entered into the lease. COVID-19 and the required closures could begin triggering these co-tenancy clauses and could result in reduced rent or termination of tenant leases for landlords.

That said, it is important to review the co-tenancy clause and the lease generally to see if a force majeure event, such as the COVID-19 pandemic, excuses the temporary closure of an anchor tenant or other tenants in the mall or shopping center before exercising rights under the co-tenancy clause. Even if the co-tenancy is silent about a force majeure event, there may be an argument that a tenant cannot exercise its remedies in a circumstance where the entire mall or shopping center is shut down or if the tenant itself is not operating its business during the shutdown. A tenant also will want to make sure that it is not in default of the lease (such as not paying rent during the shutdown) before exercising its rights under the co-tenancy clause. Obviously, there are many issues to consider with the exercise of these co-tenancy clauses and consulting an attorney to review these clauses would be beneficial, whether you are a landlord or a tenant.

The retail industry will likely need months, if not years, to find some sense of normalcy once the stay-at-home order and closures are lifted. One way for landlords to lower costs, which could also benefit tenants, would be to consider a tax assessment appeal to reduce property tax burden. For more information on the affects a tax assessment appeal could have for your property, [check out our previous client alert](#).

Please contact [Justin Tomevi](#), [Chris Naylor](#) or any of the attorneys in the [Barley Snyder Real Estate Practice Group](#), to discuss any retail lease questions or potential property tax assessments.

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