



December 11, 2020, 2020 Update (#241)

**To:** Board Members & Residents  
**From:** Charles H. Greenthal Management Corp.  
**Re:** *Governor Cuomo Announces Launch of New York Forward Small Business Lease Assistance Partnership*

Be advised, this week Governor Cuomo announced the launch of the “*New York Forward Small Business Lease Assistance Partnership*”. Acknowledging the economic hardship, the pandemic has had on small businesses, the purpose of this program is to provide small businesses and their landlords with informational resources and pro bono assistance to help both parties reach “*mutually-beneficial lease work out agreements*”. This service will be made available to all New York State small businesses and landlords.

As part of this program, Empire State Development is partnering with the New York State Bar Association and [Start Small Think Big](#), a New York-based non-profit organization dedicated to supporting small, under-resourced entrepreneurs with high-quality professional services.

For this partnership, Start Small will be offering pro bono legal services from its network of more than 1,000 attorneys, to commercial tenants and landlords seeking lease amendments to cope with the impacts of COVID-19.

The [Small Business Lease Assistance Partnership](#) website includes information on the lease renegotiation process and details the different types of lease workouts available to help small businesses cope with the financial impacts of COVID-19.

Those interested in pro bono assistance to initiate a lease renegotiation are encouraged to review and complete the partnership's [intake form](#). After completing the form, each small business will receive an email detailing an estimated timeline for placement with a volunteer attorney. Once matched, the volunteer attorney will email the applicant to schedule an appointment.

This partnership furthers the state's ongoing efforts to mitigate pandemic-related commercial evictions. On October 20, Governor Cuomo signed an [Executive Order 202.70](#), extending the state's moratorium on COVID-related commercial evictions and foreclosures through January 1. This extends protections already in place for commercial tenants and mortgagors in recognition of the pandemic's financial toll on business owners. The extension of this protection gives commercial tenants and mortgagors additional time to catch up on outstanding rent or mortgage bills, or to renegotiate their lease terms to avoid foreclosure moving forward.

### Benefits of Lease Renegotiations

When successfully executed, lease renegotiations that avoid eviction can be beneficial to both landlords and tenants.

#### For Tenants:

- Receive rent relief to help your business through this unprecedented time
- Avoid the eviction of your business
- Improve continuity of business income
- Reduce stress and uncertainty

#### For Landlords:

- Avoid costs of litigation
- Lower tenant vacancy rates
- Improve continuity of tenant rent payments
- Preserve neighborhood stability
- Avoid blight impact to area properties

### Lease Renegotiation Types

Every landlord-tenant lease agreement is unique. These relationships differ in terms of how long-term the agreement has been ongoing, the type of business the tenant is operating, the business's cash position and COVID-19 related impacts.

In recognition of these differences, LAP (Lease Assistance Program) provides a non-exhaustive list of potential lease terms that may be incorporated into a lease agreement. Some of the examples below can be pursued individually or combined together, to provide both parties with a temporary structure superior to eviction.

To this end, none of the information provided by in the examples below constitute legal advice, and both landlords and tenants should consult the service of counsel in memorializing and effectuating any of these lease renegotiations, be it through a lease amendment or other legal means.

Lease Renegotiation Option	Description	Example
<i>Rent Forgiveness</i>	Tenant unpaid rents are forgiven.	A landlord waives the tenant's need to pay all or a portion of unpaid back rent. The tenant must still pay any rent not forgiven and must continue to pay rent moving forward, starting at an agreed upon date.
<i>Rent Deferral</i>	Tenant obligations to pay rent are deferred until a later date.	A landlord agrees to allow a tenant more time to pay their rent. When rent payments resume, tenants must repay any owed rent in installments—for example, repaying six months of unpaid rent over a 12 months, in addition to the baseline rent obligation.
<i>Rent Reduction</i>	Tenant's rent is reduced.	A landlord and tenant agree to reduced monthly obligation. Either for the remainder of the lease, a set term of months, or until an outside precondition is met (i.e. lifting of all limits on indoor gatherings in commercial establishments).
<i>Lease Extension</i>	Tenant's lease is extended.	A landlord and tenant agree to extend the term of the lease, perhaps as a condition of other lease renegotiation options.
<i>Profit Sharing</i>	Tenant pays rent based on sales.	A landlord and tenant change from a fixed monthly rent to a rent based on a percentage of the tenant's sales.
<i>Profit Sharing with Reduced Base Rent</i>	Tenant pays a lower fixed rent and a supplemental rent based on sales.	A landlord and tenant agree to lower the fixed monthly rent amount as a baseline, and layer on a profit sharing agreement, based on the tenant's sales.
<i>Delinquency Fee Forgiveness</i>	Tenant's late fees or interest charges are reduced or forgiven.	A landlord waives or reduces the interest or late fees due on late rent.
<i>Security Deposit Utilization</i>	Tenant's security deposit is reduced and/or applied as rent.	A landlord and tenant agree to allow part or all of a security deposit to be utilized towards paying rent or other financial obligations.

## Lease Renegotiation Process

Lease renegotiations are entirely voluntary, and landlords and tenants are not required to enter into such an agreement. However, given the aforementioned benefits and wide range of options, many landlords and tenants may find lease renegotiations mutually beneficial.

Lease renegotiations may be initiated either by the tenant or by the landlord. Depending on which party initiates the discussion, below are steps that may be taken.

### Tenant-initiated lease renegotiations:

1. Review your finances and outlook to determine the rent you can afford and whether any one or combination of the different changes outlined above might make it possible for you to stay open.
2. Locate your lease and have it available to share with Start Small Think Big and any attorney you use.
3. Review the lease renegotiation options, to identify those that will best enable you to continue operating your business.
4. Contact Start Small to discuss the lease renegotiation options that will allow you to remain in business.
5. Reach an agreement with your landlord on mutually acceptable lease renegotiation options.
6. Memorialize the selected lease renegotiation options in a lease amendment or other legally binding document.
7. Repeat this process in the event that financial circumstances change.

### Landlord-initiated lease renegotiations:

1. Review your finances to determine the level of renegotiation options you can offer.
2. Develop potential renegotiation options for different classes of tenants.
3. Contact counsel to discuss your preferred lease renegotiation options.
4. Reach an agreement with your tenant(s) on mutually acceptable lease renegotiation options.
5. Memorialize the new lease terms in a lease amendment or other legally binding document.
6. Repeat this process in the event that financial circumstances change.

## Participating in a Lease Renegotiation

To initiate a lease renegotiation, please go [HERE](#). The New York Forward Small Business Lease Assistance Partnership provides pro bono legal services to small businesses, including landlords, to codify modified lease agreements. This Initiative is able to:

- Help you better understand the terms of your current lease
- Analyze the lease renegotiation options, to determine which structure best suits your circumstances
- Help to engage your landlord/tenant in a negotiation

### Where possible volunteers may also:

- Represent your interests in a negotiation
- Draft a legally binding contract amendment, to codify the agreed-upon terms
- Ensure that you fully understand your new contract terms from both a legal and financial perspective

We will continue to monitor, the City/State, and other organizations for new guidelines and resources and will provide updates as new information becomes available.