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Home (<http://www.justice.govt.nz/>) > About (<http://www.justice.govt.nz/about/>) >

News & media (<http://www.justice.govt.nz/about/news-and-media/>) >

COVID-19 news (<http://www.justice.govt.nz/about/news-and-media/covid-19-news/>) >

Guidance for commercial leases and mortgages during COVID-19

COVID-19 Timeline
16 May 2020

Guidance for commercial leases and mortgages during COVID-19

Many commercial lease arrangements in New Zealand will have been affected by the response to COVID-19. Tenants may be unable to pay their rent as their business is not fully operating. Landlords may also be unable to meet their mortgage payments.

The Government has taken steps to support those businesses.

On 16 May 2020, some temporary law changes were made to support tenants and landlords in this difficult situation. These changes make it easier to retain lease arrangements and get back to business as usual after the pandemic by giving parties more time to fulfil their payment obligations before the other side can take enforcement action. These are changes made to the Property Law Act 2007 as part of the COVID-19 Response (Further Management Measures) Legislation Act 2020. The changes relating to leases apply to commercial tenants and their landlords. The changes relating to mortgages apply to all mortgages, including residential and commercial as well as mortgages relating to goods (such as a business's assets other than land and buildings). However, we anticipate that mortgage holidays are likely to be the first port of call for residential borrowers.

On 30 July 2020, the Minister of Justice announced a government subsidy to assist with the cost of mediation and arbitration for New Zealand businesses and landlords to resolve issues about adjusting rent as they face the economic impacts of COVID-19. Further information about the subsidised COVID-19 commercial lease dispute service is available on our website at:

COVID-19 Commercial lease dispute services (<http://www.justice.govt.nz/tribunals/covid-19-commercial-lease-dispute-services/>)

This guidance provides more information about the changes and should help commercial tenants and landlords find an approach that works for both. The Ministry of Justice has prepared this guidance in consultation with the New Zealand Law Society | Te Kāhui Ture o Aotearoa (Law Society).

How are commercial leases and mortgages affected by the response to COVID-19?

For commercial leases, the impact of COVID-19 has meant that:

- many businesses renting commercial property were unable to fully operate and could not access or use their premises in the normal way (for example, because they were not essential services)
- as a result, commercial tenants may have temporary difficulty paying the rent and outgoings, and
- commercial landlords who have mortgages may, in turn, have trouble making mortgage payments.

This may require the parties to think about what happens with the lease and with mortgages. Commercial landlords or tenants may consider terminating leases. Tenants have an interest in reducing their rent. Borrowers may face the sale of their property by lenders if they cannot service the mortgage.

Some of these challenges are likely to continue to some extent. For example, many businesses may take some time to re-establish their business, may not be allowed to provide the full range of their services (for example, businesses catering for large conferences or other gatherings), or have to operate at reduced capacity, such as restaurants.

What should commercial landlords, tenants, lenders and borrowers do?

As many commercial landlords, tenants, lenders and borrowers have already done, the best approach is to work together constructively to find a solution which is sustainable and will meet all parties' needs and interests.

The Government has made some temporary law changes to give commercial tenants and landlords a better chance to get through this difficult situation and help ensure that the parties will share the financial pain of the COVID-19 pandemic. You should talk to your lawyers and real estate professionals to discuss what the current situation means for you, what the law changes may mean and what to do next.

What are the law changes that have already been made to support commercial landlords, tenants, lenders and borrowers?

On 16 May 2020, a temporary law change was made giving commercial tenants more time to catch up on overdue rent before a landlord can take steps to evict them.

Normally, the law says that a commercial landlord must give a tenant at least 10 working days' notice before cancelling a lease because of overdue rent.

Under the changes, the notice period is extended from 10 working days to 30 working days. This means commercial tenants have more time to catch up with rent payments before the tenant can be evicted. If the tenant is not able to catch up, the tenant has more time to approach the landlord to negotiate temporary changes to the rent or lease agreement to help the tenant get by until it can resume operating as usual.

What about the landlord's mortgage repayments?

If commercial tenants are having difficulty paying rent, that may make it difficult for landlords to keep up with their mortgage payments. The law changes also give borrowers (including landlords) more time to catch up on overdue mortgage payments before a lender can take steps to enforce the mortgage.

The current law says that lenders must give 20 working days' notice before they use their powers to take possession of, or sell, the mortgaged property. The temporary law changes extend that period to 40 working days.

This change will apply to all mortgages, including residential and commercial, and regardless of whether the mortgaged property is tenanted. However, we anticipate that mortgage holidays are likely to be the first port of call for residential borrowers.

These temporary law changes mean that, like commercial tenants, borrowers have a better chance to get through the COVID-19 situation and temporary financial hardship. They still have the same payment obligations but have more time to remedy breaches or defaults.

What are the rules for mortgaged goods other than real property?

The law changes also extend the notice timeframes in the case of mortgaged goods owned by a business. This could be a mortgaged fleet of vehicles.

For these types of mortgages, the timeframes are temporarily changed from 10 to 30 working days before the lender can take enforcement action.

When do these law changes apply?

The law changes in the *COVID-19 Response (Further Management Measures) Legislation Act 2020* came into force on 16 May 2020.

The changes have, however, been backdated so that they apply from 1 April 2020. This will ensure they apply to all tenants and borrowers affected by the measures taken to respond to COVID-19. If you have any questions about what this means for your specific lease or mortgage, you should consult your lawyer. This means that, even if a notice was given or a lease cancelled before the new law came into force, the new extended timeframes would generally apply and a cancellation might not be fully effective.

This is a temporary change to provide relief to tenants and borrowers affected by the response to COVID-19 and allow more time for parties to discuss how they may get through this period and resume business when the Alert Level allows for it. The law will return to the current timeframes six months after the end of the Epidemic Preparedness (COVID-19) Notice 2020. The current notice expires on 23 December 2020 (unless an earlier expiry date is notified, or the notice is renewed).

If your lease or mortgage is affected by COVID-19, you may like to talk to a lawyer about how the law changes apply to your circumstances. This is particularly important if you are a tenant who has been given notice of overdue rent payments, or a borrower who has been given notice of overdue mortgage payments.

Landlords and lenders who are considering taking action to enforce leases and mortgages should also consider first getting legal advice.

What is the purpose of these changes?

The changes aim to support commercial landlords, tenants and borrowers through the COVID-19 situation. They provide relief for businesses, to help them stay solvent through the pandemic, which will help New Zealand's economic recovery. They are part of a wider government package of business support.

More information on the broader business support measures is available on the Government's COVID-19 website:

[Government COVID-19 website](#) 


Do these changes apply to my residential lease or mortgage?

The changes in the Bill do not apply to residential tenancies. For those leases, the Government has already made changes:

[Changes to the termination provisions](#)



These changes to the Property Law Act apply to all mortgages over land, whether for commercial or for residential property. However, there may also be other options available for residential mortgages, such as a mortgage repayment holiday:

[More information about the mortgage holiday scheme](#) 

Where can I find more information about the law changes?

The main contact for parties having issues with commercial leases or mortgages should be their lawyers.

Commercial landlords and tenants can also ask their real estate professionals, such as real estate agents or property managers, for support when discussing new arrangements.


The Real Estate Authority is the regulator for agents facilitating commercial leases:

[Real Estate Authority website](#) 

The Ministry of Justice is responsible for real estate laws, in particular the Property Law Act 2007 and will provide further information on the arbitration subsidy later in June.

[Ministry of Justice \(http://www.justice.govt.nz/\)](http://www.justice.govt.nz/)

The Law Society regularly publishes information on the legal impacts of COVID-19 on its website:

[Law Society latest news](#) 

Information on the Government's COVID-19 economic package and business support is available on Treasury's website and the Government's COVID-19 website:

[Treasury's website](#) 

[Government COVID-19 website](#) 

The Ministry of Business, Innovation and Employment (MBIE) and the Ministry of Housing and Urban Development (HUD) have information on residential tenancies:

[What landlords and tenants need to know](#) 

[Rent freezes and tenancy terminations](#) 

COVID-19 response level measures apply to all of us

The purpose of the response to COVID-19 is to save lives. Everybody needs to stick to the rules of physical distancing and only operate businesses to the extent this is allowed under the applicable Alert Level.

Across the world, millions of businesses are affected in one way or other by COVID-19. Parties to commercial leases are expected to share the financial burden of the COVID-19 impacts. Be kind, cooperate and try to find a good way forward which works for both parties considering these unprecedented circumstances.

← [Back to the news \(http://www.justice.govt.nz/about/news-and-media/covid-19-news/\)](http://www.justice.govt.nz/about/news-and-media/covid-19-news/)

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