



# Navigating COVID-19, Guidance for Landlords and Tenants

The first in a series of ongoing conversations between CBRE and Kutak Rock LLP

 CBRE

It's important to remember that we are ALL in this together: landlords, tenants, insurance companies, the government. With respect to the commercial office sector, this moment is a great opportunity for landlords and tenants to build massive good will and long-term partnerships. They should proactively engage in conversations to understand the impacts of this crisis and focus on creative solutions.

## CBRE's Albanese/Weld Perspective

**Current Downtown Denver Market Status:** As of May 1, 2020, Denver remains under a "stay at home" mandate from the City, which is currently set to expire May 8, 2020. The expectation is that many companies will extend their personal office employee work-from-home (WFH) policies beyond this date given the continued uncertainty around health and safety risks and the complexities of implementing a phase-in approach to re-entering the office to maintain social distancing. These factors combined with general economic concerns have brought tours and leasing activity to a near halt over the last six weeks. As of the beginning of March, we were tracking 116 active companies with a positive absorption expectation of 721,068 SF. However, as of today, more than two-thirds of these requirements have been put on hold or cancelled.

**2020-2021 Market Outlook:** Uncertainty surrounding the global economy combined with local supply / demand dynamics present notable headwinds in the near term for office leasing; however, downtown Denver remains a diversified regional hub city with little exposure to any one industry type. With a deep educated employee base that should continue to attract major employers, Denver is positioned to recover more quickly than many other markets across the country. The primary driver for increased office demand will be the alleviation of health and safety concerns. In the meantime, given current supply / demand factors, it is reasonable to project that the downtown Denver office market will exceed 25% availability in the next 6-18 months, matching or surpassing its prior 20-year highs.

**Workplace Considerations:** Workplace strategies have been a primary focus in the commercial office markets over the past 10 years. Will the impact of COVID-19 on cultural, societal, and occupational norms shift the paradigm of how we work? These questions and more will be addressed in future discussions as part of this series.

## Kutak Rock's Legal Perspective:

Kutak Rock's real estate department provides services to landlords and tenants across the country. During the past six weeks, we have seen a halt in the previously booming market of new leases and lease extensions and a movement toward abatement agreements and default notices. In light of the pandemic, we expect a shift in the negotiation of certain lease provisions and the manner in which companies use space going forward. Given the current unprecedented circumstances, landlords and tenants are seeking answers regarding their respective rights and remedies under their leases. We recommend a thorough review and analysis of the entire lease by legal counsel. Below are a few key lease provisions that should be analyzed on a case-by-case basis:

- Provisions related to payment of rent and whether the lease explicitly requires payment without deduction or set-off for any reason;
- Language related to constructive eviction and quiet enjoyment;
- Provisions granting tenants unrestricted access or use of the premises, and whether the landlord has the right to discontinue access or services in an emergency;
- Condemnation/casualty provisions;
- *Force majeure* clauses, noting whether such clauses include rent abatement (NOTE, in commercial office leases, *force majeure* clauses often do not excuse untimely payment of rent and amounts due by tenant);
- Continuous operation covenants (in retail leases) and, if breached, the effect on percentage rent;
- Language related to the security deposit, guaranty and/or any other credit support such as letters of credit; and
- Holdover provisions (if the lease is close to expiration or month-to-month).

**Monitor CBRE Updates:** Tenants should continue to monitor the real estate market to assess portfolio positions, strategize around future operations, and create cost savings where opportunities exist. [CBRE's COVID-19 Hub](#), which can be found at the [Albanese/Weld team website](#), includes global research publications, white papers, flash calls, and weekly podcasts from our economic and industry experts. To stay informed, engaged and connected, please refer to the Hub for updates by CBRE's global research team.

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**Monitor Kutak Rock LLP's Updates on Legal Developments:** Landlords and tenants should continue to monitor the rapidly evolving crisis and any legal developments resulting therefrom. Kutak Rock LLP's Portal, which can be found at [COVID-19 Legal Resource Portal](#), includes publications, legal alerts, and federal and state relief measure information regarding the COVID-19 pandemic, from Kutak Rock attorneys in our 18 offices nationwide, as well as links to websites offering important disease control, workplace and regulatory guidance. To keep pace with a rapidly evolving situation and news cycle, the Portal continues to be updated frequently.

# Additional Questions

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If you have additional questions as you navigate difficult scenarios brought on by or arising out of the COVID-19 pandemic, please contact us:

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