Reopening for Business: 
Navigating through New COVID-19 Requirements & 
Existing Commercial Leases 

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Reopening Rhode Island’s Economy

- Reopening the economy in 3 phases.
- Phase 1 will start Monday, May 11th.
- At least 14 days between each phase.
- Could be additional phases beyond Phase 3.
- All businesses open during Phase 1, must provide a signed checklist regarding COVID-19 precautions by May 11th. Can provide at a later date if opening after May 18th.
- All businesses must create a COVID-19 plan by May 18th, but this need not be submitted.
What to Expect in Phase 1

- Office businesses
  - Will continue to work from home.
  - Very limited in office personnel.
  - Very limited in person meetings as long as social distancing is maintained.

- Non-essential retail
  - Will be opened for limited in person browsing.
  - Encourage pickup and curbside pickup.
  - One customer per 300 sq. ft. of space.
  - Barriers between customer and cashier.
  - 6 feet social distance markings.

- Outdoor dining in restaurants; Other close-contact businesses to open in a later phase.
Mandatory Requirements for Businesses in Phase 1

- **Cleaning**
  - At least daily cleaning for businesses.
  - High touch surfaces should be cleaned frequently.
  - Provide soap and water/hand sanitizer for employees and customers.
  - Provide disinfecting wipes for employees at high touch areas.

- **Social Distancing Markings**
  - Provide markers for customers to keep appropriate 6 ft. distances both inside and outside the business.

- **Employee and Customer Health and Screening**
  - Screen employees and customers for symptoms.
    - Can be completed via poster.
    - Any employee with symptoms must be sent home.

- **Signage**
  - Public reminders about social distancing requirements.
Face Covering Requirements

- All Rhode Islanders are required to wear face coverings when in public.
  - Public spaces include both indoor and outdoor spaces.
- Businesses must provide face coverings for their employees.
- Customers must wear face coverings when in retail establishments.
- Employees and business owners are not required to enforce the face covering requirement as to customers.
Best Practices for Businesses in Phase 1

- **Contactless payment**
  - Encouraged but cannot be mandatory.
  - All RI businesses must accept US currency.

- **Barriers at checkout areas**
  - Encouraged to create a clear partition between customers and cashiers.

- **Communal areas**
  - Consider closing or restricting access to communal areas.
  - Break rooms, kitchens and conference rooms.
  - Dressing rooms, samples should not be used.

- **Staggered work schedules**
  - Group employees so that they interpersonal contact is with a limited group of individuals.
COVID-19 Control Plan

- Businesses must submit checklist by May 11th, draft plan but not submit by May 18th.

- In addition to the requirements already discussed:
  - Designate a human resources or point person to communicate with Department of Health regarding COVID-19 outbreaks.
  - Notify Department of Health of any employee with a positive COVID-19 test.
  - Stay up to date with new industry-specific guidance by either visiting reopeningri.com or staying in touch with local chambers of commerce.
  - Develop a COVID-19 sick policy and communicate it to employees.
    - Sick policy should allow for quarantine or isolation of co-workers.
Compliance with Phase 1 Requirements

- What is enforceable and what is simply guidance?
- What are the penalties for noncompliance?
- Consider all relevant laws and ordinances—including municipal ordinances.
- Guidance to be provided for relevant business sectors at reopeningri.com
Key Terms in Commercial Leases

- Term of the Lease
- Force Majeure
- Landlord Services
- Quiet Enjoyment
- Co-Tenancy
- Percentage Rent
- Security Deposit
- Guarantees
- Letters of Credit
- Notice
- Default
- Cure Periods
- Dispute Resolution/Costs of Dispute
Insurance Considerations

- Tenant Business Interruption
- Landlord Business Interruption
- Any government intervention/terrorism or other coverage
- Notice to carrier
Practical Considerations

- Nobody knows how long or deep current problem will be - best to maintain relationships
- Talk to counterparty
- Consider third party relationships: banks, union contracts, vendors, etc.
- Financial assistance through newly available SBA loans enacted by CARES Act
- PPP Covenant Considerations
Models for Compromise

- **Creative Solutions:**
  - Abate/cancel rent (1-3 months average), then renew payments;
  - Defer rent or partial rent with “make up” in following periods;
  - Abate with additional time added to end of lease term;
  - Defer rent with deferred rent added to additional lease term.

- **Tenants:** talk to your landlords

- **Landlords:** talk to your lenders and investors
Status of Commercial Evictions in RI

- On April 8, 2020, the RI Supreme Court Continued its Emergency Order requiring that Non-Essential Court Proceedings, including commercial evictions, be suspended until after May 17, 2020.

- Supreme Court could amend its Order to extend the suspension of court proceedings.
RI Superior Court COVID-19 Business Recovery Plan

- Non-Liquidating Receivership Program
  - Allows businesses that are unable to pay debts to resume and/or continue operations in accordance with a Court-approved “Operating Plan”

- Non-Liquidating Receivership Order and Required Operating Plan

- Non-liquidating Receivership Order prevents:
  - Acts of possession of property of, or from, the receivership estate or exercise control over property of the receivership estate
  - Any act to create, perfect, or enforce any lien against property of the receivership estate
  - Any act to collect, assess, or recover a claim against a receivership business
  - Enforce a Judgment against Receivership business or property of receivership estate
Non-Liquidating Receivership Program
Continued

- **Eligibility Requirements:**
  - Business was not in default of its financial obligations as of 1/15/2020; **AND**
  - Business experienced reduction in gross revenue of at least 20% in a 60 day operating period beginning 1/15/2020 as compared to similar period prior to 1/15/2020; **OR**
  - Business was forced to cease substantial portion of its operations due to government or regulatory order after 1/15/2020; **OR**
  - Business can certify or demonstrate COVID-19 created an adverse impact on business operations from either government or regulatory mandated partial or complete closure, or a substantial interruption of cash flow occurring after 1/15/2020, attributable to COVID-19, which would have been used to fund business operations, and as a result, the business is unable to continue or resume operations and pay its debts in the ordinary course of business