

Dear valued clients

As we mark the first week of alert level four lockdown on account of Covid-19 we understand that many aspects of life and business are certainly changing as a result. We hope that any ill effects from this regrettable situation on either your personal lives or your businesses will be something that we can all recover from quickly once we get through this crisis.

As many of you may be aware that there is a clause in the more recent editions of the Auckland District Law Society (ADLS) standard form Deed of Lease which reads:

No Access in Emergency

27.5. if there is an emergency and the Tenant is unable to gain access to the premises to fully conduct the Tenant’s business from the premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:

- a) a prohibited or restricted access cordon applying to the premises; or
 - b) prohibition on the use of the premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the premises are fit for use; or
 - c) restriction on occupation of the premises by any competent authority,
- then a fair proportion of the rent and outgoings shall cease to be payable for the period commencing on the date when the Tenant became unable to gain access to the premises to fully conduct the Tenant’s business from the premises until the inability ceases.

This particular provision was included in ADLS leases in 2012 as a result of the Christchurch Earthquakes of 2010 and 2011. This provision is certainly a basis to argue that a “fair proportion of rent and outgoings will cease to be payable” while we as a country are on Alert Level 4 lockdown.

However, not all leases will contain this provision – so before doing anything you should check your lease to be sure whether it applies to you.

In addition, the definition of “fair proportion” will depend on a large number of factors (whether you are a landlord or a tenant) and which include things such as the particular industry and business the tenant is in, the effect the lockdown is having on the tenant’s ability to conduct its business from the leased premises and in turn the effects that is having on the tenant’s revenue stream. For example, premises that are primarily retail will have very different considerations from premises that are essentially warehousing or storage.

Opening a dialogue between all parties involved is the first, and most important step in this situation. From there ideally a mutually workable solution can be agreed between landlord and tenant.

We’re always here to help and fully operational – and so if anyone requires advice or assistance in relation to their lease situation, whether landlords or tenants, we are more than happy to assist and look forward to hearing from you.

Take care in these trying times.