

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

Robert I. Stolzman, Esq., Elizabeth A. Suever,  
Esq. & Christine M. DiBiase Esq.



# Reopening Rhode Island's Economy

- ▶ Reopening the economy in 3 phases.
- ▶ Phase 1 will start Monday, May 11<sup>th</sup>.
- ▶ 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 11<sup>th</sup>. Can provide at a later date if opening after May 18<sup>th</sup>.
- ▶ All businesses must create a COVID-19 plan by May 18<sup>th</sup>, 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 11<sup>th</sup>, draft plan but not submit by May 18<sup>th</sup>.
- ▶ 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](http://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](https://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

<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorAdmOrders/20-04.pdf>

