

“Commercial Tenants in Trouble—Consequences and Practical Workout Solutions”, by Janet Jackim, Esq., JACKIM HAINES LAW GROUP llc © 2009\*

**Diminishing customer traffic, sales, and telephone calls. Increasing labor costs. Closed storefronts and see-through buildings.** In today’s economy, landlords *and* tenants of commercial properties are facing similar challenges: declining revenues, increased operating costs, uncollectible receivables, the closing of a shopping center’s anchor tenant, declining building services, the bankruptcy of a partner, customer or vendor, bad weather and lack of funding sources, to name a few. Read any business magazine or the local newspaper’s business section and you’ll quickly learn how the financing void and general economic lethargy have had staggering effects upon commercial lease transactions (office, industrial/warehouse, and retail properties). Tenants in trouble – those either unable or unwilling to pay rent as stated in their lease – initiate a series of concussions upon commercial landlords and the economy as a whole. This article examines the consequences of commercial tenants in trouble and suggests negotiating strategies to provide rent relief to tenants while stabilizing the landlord’s property.

Landlords and Tenants Compete for a Small Number of New Tenants: Take, for example, the situation of a retail tenant in a 2005-constructed Peoria, Arizona shopping center who experienced a 30% sales drop as neighborhood home foreclosures began to increase. Hoping to stop the bleeding, that tenant looks for alternative ways to reduce or eliminate its monthly rent payment, including reducing its space and/or rent, early terminating the lease, or trying to find a replacement tenant under a sublease or lease assignment. Similarly, the shopping center owner is experiencing an increasing vacancy rate of spaces abandoned by failing businesses, in addition to new spaces that had never been leased. Hoping to increase occupancy, the shopping center owner offers rent concessions to attract new tenants. Prospective and replacement tenants are presented with numerous options when both landlords and tenants compete for their business. However, in a shrinking economy, only a limited number of businesses—both startups and established--are looking for rental space; as a result, the commercial landlord who is looking for *new* tenants and the commercial tenant who is looking for a *replacement* tenant, are competing against each other for the attention of very few prospective tenants.

Rent Concessions are the Norm: In a shrinking economy, other consequences result to commercial landlords and tenants. Today, prospective tenants expect the landlord to offer substantial concessions, including rent abatement, more tenant improvement dollars and services, a shorter lease term, and limited or no personal guarantees as inducements to sign a commercial lease. Knowing that landlords are now offering these concessions, current commercial tenants want to benefit, too, from today’s “tenant’s market” and they are asking landlords for rent forgiveness, reduced premises, or relocation into smaller space, and increased marketing dollars.

Lease Modifications and Increasing Credit Risks: During the summer of 2008, landlords typically resisted tenants’ lease modification requests, although major retailers such as Blockbuster Inc. had initiated plans to renegotiate leases across the United States. By the end of 2008, however, landlords’ resistance to lease renegotiations began to ease with the increase of office, retail and industrial/warehouse vacancies, bankruptcy filings, stock market losses, and general economic inactivity. A related consequence to both landlords and tenants is that both

new tenants, as to new lease transactions, and current tenants, as to lease modifications, are more likely to pose a credit risk and be unable to successfully fulfill their lease obligations.

**Making sense of the turmoil—workout solutions.** What workout solutions are available when tenants are in trouble? **Lease renegotiation (or lease modification), early lease termination, subleasing, and an assignment of the lease** are workout solutions available to commercial landlords and tenants in today’s economy. Workout solutions can also be used by a landlord as an appropriate strategic tactic when a problem tenant should be replaced, a replacement tenant has been located, tenant mix in the property will be improved if the current tenant vacates, and/or current lease terms can be adjusted to correspond with the modification, termination, sublease or assignment.

Lease Renegotiation (or Lease Modification): Given the ugly consequences mentioned above when tenants are in trouble, **lease renegotiation** (also referred to as “**lease modification**” or “**lease amendment**”) is typically the most efficient, quickest and least expensive of various workout solutions because the parties do not change and only some, but not all, of the lease is changed. Typical provisions to be modified in a down economy are: 1) rent (lowered), 2) the size of the leased premises (reduced), and 3) the length of the lease term (lengthened to accommodate free or lowered rent). A landlord may also offer tenant improvement dollars (called “TI’s”) to entice a tenant to remodel its space rather than vacate. When approaching a landlord to renegotiate the lease, consult a commercial real estate agent familiar with your market to obtain updated rental and vacancy rates in the local market and workout solutions your landlord has offered to other tenants. A well informed tenant has more leverage in renegotiating a lease.

In lease renegotiations, an “Amendment” to the lease document is signed by landlord and tenant. Other important persons should also sign or at least approve the Amendment, e.g., the real estate broker, landlord’s lender, and the guarantors (see the “In Writing” critical point below for additional suggestions regarding signatures). If intended modifications to the lease are so comprehensive or if the resulting modified lease would be difficult to understand, the lease may be “amended and restated” in a new form to incorporate the original and new lease terms. If the tenant is a debtor in a Chapter 11 bankruptcy proceeding and landlord and tenant renegotiate terms of the lease, the debtor will “assume” the lease as amended, cure all defaults (e.g., pay outstanding rent), and the modified lease will be subject to Bankruptcy Court approval.

Early Lease Termination: **Early lease termination** permits the tenant to get out of the lease entirely prior to the lease’s end date. Typically the tenant will pay landlord some of the future rentals or the landlord keeps tenant’s security deposit for the early termination. (In a “landlord’s market” of rising rental rates, landlord may pay the tenant to early terminate.) It is important for landlord and tenant to establish dates certain for: 1) tenant’s vacating of the premises, 2) tenant’s cleanup and repair of damages to the premises (and photographs of the premises to record its physical condition), 3) landlord’s subsequent inspection of the premises, and 4) tenant’s return to landlord of the keys, security passwords, and any removed fixtures. If any of the stipulated actions by tenant does not occur timely (e.g., tenant fails to vacate on the required date), the early lease termination agreement is rescinded and the lease will remain in

effect; in that event, if the tenant does not perform the lease fully, landlord may sue for damages (and would have other remedies under the lease and at law, including eviction).

If the premises has been contaminated by tenant's use (for example by dry cleaning fluids, copier dust, or gasoline), landlord should not agree to early termination until the State and landlord's remediation experts have approved tenant's cleanup actions. Landlord should be present whenever the tenant vacates so that landlord can take note of damages to the premises caused by the move out and confirm that the furniture, trade fixtures and equipment being removed by tenant do not belong to the landlord. Many commercial leases include provisions detailing ownership of real estate fixtures, improvements, and immobile equipment when a tenant vacates, typically making landlord the owner at lease termination.

In early terminating a lease, a "Lease Termination Agreement" is signed by landlord and tenant. Other important persons should sign or at least approve the Amendment, e.g., the real estate broker, landlord's lender, and the guarantors (see the "In Writing" critical point below for additional suggestions regarding this document). At a minimum, this Agreement establishes various due dates (see above) and financial terms of the termination. It should also include the parties' mutual release of claims against each other and in that regard is also considered a "settlement agreement".

If the tenant is a debtor in a Chapter 11 bankruptcy proceeding and tenant decides to "reject" (or terminate) the lease and vacate the premises, landlord will be entitled to make a damage claim in the bankruptcy proceeding and the rejection of the lease will be subject to Bankruptcy Court approval. Landlords should carefully consider agreeing to an early lease termination if the tenant is insolvent because if the tenant makes a termination payment (discussed above) and files for bankruptcy protection within 90 days of making the payment, the trustee in tenant's bankruptcy proceeding may seek recovery of the termination payment as a "preference" under the U.S. Bankruptcy Code. See *Midwest Holding No. 7, LLC v. Anderson*, 387 B.R. 892 (N.D. Ga. 2008).

Sublease: A **sublease** occurs when a tenant (now called the "sub-landlord" or "sublessor") desires to lease (now called a "sublease") a portion or all of the premises to another tenant (now called the "subtenant" or "sublessee") but the sub-landlord *retains an interest* in the lease for a day or more. The tenant now becomes a landlord subleasing to a new tenant and the sublease is a lease within a lease. The tenant is not released from its tenant obligations under the lease but also becomes responsible for the performance of the subtenant. If the roof leaks or the building suffers destruction by fire or weather, the subtenant looks to the sub-landlord to make repairs; in turn, the sub-landlord looks to the landlord to make repairs. Similarly, the subtenant pays rent to the sub-landlord under the terms of the sublease and the sub-landlord pays rent owed under the lease to the landlord. Guarantors of the lease continue to be responsible under their lease guarantees if the tenant fails to perform the lease or if the subtenant causes a default of the lease (for example, the subtenant causes environmental contamination to the premises). Having a prospective subtenant in hand when making a workout proposal to a landlord is a strong first step.

Many commercial leases favoring landlords prohibit subleasing because the landlord loses practical control over the premises when a substitute tenant is installed; others

prohibit subleasing except when certain conditions (discussed below) are met. In Arizona, if a lease does not include a prohibition against subleasing, the tenant may enter into a sublease. If the lease is silent on prerequisites to a tenant entering into a sublease, the tenant may freely do so. See *Tucson Medical Center v. Zoslow, M.D.*, 147 Ariz. 612, 712 P.2d 459, *adopting the Restatement 2d of Contracts, §205, for a recitation of these general rules*. Often, however, the lease will include such prerequisites called “conditions precedent”, to tenant’s right to sublease. Typical conditions precedent include: 1) landlord’s prior written consent to the sublease (see the “Consent Subject to Reasonableness Standard” critical point below for additional clarification of landlord’s consent obligation), 2) the submission of the proposed sublease to landlord, 3) the submission of financials of the proposed subtenant to the landlord, 4) the submission of updated financials of the tenant and lease guarantors, if any, to the landlord, 5) that subtenant’s intended use of the premises is consistent with or the same as tenant’s use, 6) that subtenant’s use does not violate exclusive use guarantees given by landlord to other tenants, and 7) that the subtenant’s financials, management team and business operations are at least as strong as tenant’s. Prior to granting consent to the sublease, landlord should inspect the premises and take photographs to record its present physical state.

To effect a sublease, a “Sublease Agreement” is signed by the tenant, as sub-landlord, and subtenant. Sub-landlord may require personal guarantees from the owners of subtenant if it is an entity (corporation, limited liability company or partnership) (see the “In Writing” critical point below for additional suggestions regarding this document). While the Sublease Agreement is just like a lease, and in many cases will be substantially similar to the lease, it will also typically include a special provision unique to the sublease: a *requirement* that the subtenant comply with all provisions of the lease that *would ordinarily apply to the tenant*. Additionally, the sublease should include provisions particular to the contract between the sub-landlord and the subtenant such as: 1) the sublease rent, 2) that the length of the sublease is no longer than the term of the lease, 3) rent is paid to the sub-landlord, not the landlord, and 4) that the tenant not contact the landlord.

If landlord’s consent to the sublease is required by the lease, a “Landlord’s Consent to Sublease” form should be signed by landlord for the benefit of tenant (see the “Consent Subject to Reasonableness Standard” critical point below for additional clarification of landlord’s consent obligation); other important persons may also have consent rights, e.g., landlord’s lender and the lease guarantors (see the “In Writing” critical point below for additional suggestions regarding this document).

Assignment of Lease: Typically in an **assignment of lease**, the tenant (now called the “assignor”) transfers (or “assigns”) the *entire* lease to a new tenant (the “assignee”) who not only now owns the tenant’s rights but also assumes (the “assumption” of) the responsibilities of tenant under the lease. All of the lease continues to apply except now there is a new tenant, the assignee. This is a substitution of one tenant for another. Often the original tenant is released from tenant’s obligations under the lease because a new tenant has “assumed” those obligations (sometimes landlords will not release the original tenant but want two tenants responsible for the lease). Of course, if you are an assignor, you want to be released from all such obligations. The assignor and assignee need to determine how security deposits and utilities will be handled and who will own them; an assignee will likely pay the assignor the amount of the security deposit (which remains in the landlord’s custody) and pay new deposits to

the utility companies so that assignor's deposits can be released. Often the sale of a business occurs between assignor and assignee and the lease is just one of the many assets sold in this type of transaction.

Many commercial leases favoring landlords prohibit lease assignments because the landlord loses some control over the premises when an assignee is installed; others prohibit assignment except when certain conditions (discussed below) are met. In Arizona, if a lease does not include a provision prohibiting assignment, the tenant may enter into a lease assignment. If the lease is silent on prerequisites to assigning the lease, the tenant may freely do so. *See Tucson Medical Center v. Zoslow, M.D.*, 147 Ariz. 612, 712 P.2d 459, *adopting the Restatement 2d of Contracts, §205, for a recitation of these general rules.* Often, however, the lease will include such prerequisites called "conditions precedent" to tenant's right to assign. Typical conditions precedent include: 1) landlord's prior written consent to the assignment (see the "Consent Subject to Reasonableness Standard" critical point below for additional clarification of landlord's consent obligation), 2) the submission of the proposed assignment to landlord, 3) the submission of financials of the proposed assignee to the landlord, 4) the submission of updated financials of the tenant and lease guarantors, if any, to the landlord, 5) that assignee's intended use of the premises is consistent with or the same as tenant's use, 6) that assignee's use does not violate exclusive use guarantees given by landlord to other tenants, and 7) that the assignee's financials, management team and business operations are at least as strong as tenant's. Prior to granting consent to the assignment, landlord should inspect the premises and take photographs to record its present physical state.

If landlord's consent to the assignment is required by the lease, a "Landlord's Consent to Assignment" form should be signed by landlord for the benefit of assignor and assignee; other important persons may also have consent rights, e.g., landlord's lender and the lease guarantors (see the "In Writing" critical point below for additional suggestions regarding this document).

Commercial leases often include an expanded definition of what constitutes an "assignment" subject to the landlord's consent, such as: 1) the sale of stock in a non-public corporate tenant, 2) the sale or transfer of membership interests in a limited liability company tenant, and 3) a transfer of partnership interests in a general or limited partnership tenant. These provisions are intended to subject the change of ownership in the tenant entity to the landlord's prior approval.

**Critical points to cover when pursuing workout solutions.** When pursuing any of these workout solutions, I suggest the following critical points be addressed by the parties:

✓ Know your market. A tenant should be prepared to negotiate a workout solution on the basis of current market conditions, including: 1) rent other tenants are paying in the property in which the premises is located, especially recent tenants, 2) rentals being advertised for other similar properties in the general area of the leased premises, 3) workout solutions offered by landlord to other tenants, 4) whether landlord is current on its loans and whether landlord's lender is reported to be in financial trouble, and 5) whether landlord has closed its offices or made substantial reductions in force. Landlords of properties without financing have more leeway to grant rent concessions. While landlords who offer concessions typically make

their tenants keep workout negotiations confidential, invariably the workout terms become public knowledge. Landlords whose lenders are in receivership or otherwise facing financial meltdown may have more interest in keeping their tenants in place.

✓ Highlight flaws in the lease. To obtain some leverage in negotiating a workout, a tenant should carefully review its lease and landlord's administration of the lease for errors or flaws, including: 1) improper designation of the tenant or tenant entity or improper signatures of the tenant or tenant entity (which might permit tenant to claim it has no interest in the lease), 2) a poorly defined early termination provision (that grants the right to terminate early to the tenant but does not indicate the conditions under which tenant may execute the termination), 3) common area expense charges that are allocated to tenant but are not documented or exceed lease caps (an audit of which might reveal landlord's excessive or undocumented charges), 4) changed circumstances not anticipated by the parties (e.g., a change of the law regarding access of the premises to the handicapped), and 5) failure of landlord to disclose hazards. Additionally, tenant should determine whether landlord has strictly followed all provisions in the lease that are landlord's obligations to tenant, including: 1) notice to tenant of default, 2) the length of tenant's default cure period, 3) ensuring that tenant has the quiet enjoyment of the premises, 4) ensuring that the property in which the premises is located has a tight roof or is not contaminated or otherwise unhealthy to tenant and its employees (these pose potential "constructive eviction" claims by tenant), 5) timely construction and delivery of the premises and provision of other services, and 6) tenant's right to the exclusive use of the premises. All of the foregoing should be brought to landlord's attention as potential pitfalls should landlord attempt to enforce the lease against tenant.

✓ Update financials. Be prepared to provide current updated financials to the landlord or its real estate agent. The landlord wants written justification for the tenant's professed inability to pay the lease rent or other reasons for a lease workout (landlord may also be required to submit this information to its lender). Typically, these financials do not need to be prepared by a CPA, although the savvy landlord will require that an officer of the tenant, if tenant is an entity (a corporation, limited liability company, or partnership), or the business owner *certify to the landlord* that the financials are true, accurate and complete. If the lease will be assigned to a replacement tenant or a sublease is being proposed, the financials of the assignee (in the case of an assignment) or the subtenant (in the case of a sublease) should also be presented to the landlord.

If I am representing a tenant client, I suggest that tenant submit only limited financials containing minimal information at the commencement of workout negotiations. My concern is that detailed financial information could be used by the landlord against the tenant if negotiations are unsuccessful and the tenant is sued for breach of the lease. Prior to delivering financials (of tenant, the assignee, subtenant and guarantors), I suggest obtaining the landlord's written agreement to keep the financials confidential.

✓ In writing. Make sure the results of your negotiations are memorialized in a writing signed by: 1) landlord (through an officer or other representative, if landlord is an entity), 2) tenant (through an officer or other representative, if tenant is an entity), 3) the new tenant (if the lease is being assigned) or the subtenant (if a sublease is being executed), 4) guarantor(s), if any, 5) the real estate broker(s), if any, and 6) the lenders of both landlord and tenant.

✓ Approvals obtained. Material changes to a commercial lease may affect a real estate broker's commission; therefore, landlord should make sure that the affected broker has consented to the revised commission. Loan documents may prohibit modifying, terminating, or assigning the lease or subletting the premises without the landlord's lender's prior approval. Expect that the lender may take 60 days to approve the workout.

✓ Properly name the parties. Make sure that the names, titles, and signatures of the parties to your negotiations are accurately stated in the workout document. Failing to do so means that your negotiations may not be binding. You can check entity names with the Arizona Corporation Commission at [www.azcc.gov/divisions/corporations](http://www.azcc.gov/divisions/corporations); there you can determine whether a corporation or limited liability company is in good standing with the State, who owns the entity (and who is authorized to sign for the entity), and its local address and contact information. At the Maricopa County Assessor's Office, [www.maricopa.gov/Assessor/ParcelApplication](http://www.maricopa.gov/Assessor/ParcelApplication), you can confirm ownership of the premises and who should be signing on behalf of the landlord (although these records are not always up to date). Recorded documents at the Maricopa County Recorder's Office, [www.maricopa.gov/recdocdata](http://www.maricopa.gov/recdocdata), can confirm ownership and other important information, such as whether a lender exists and easements and conditions, covenants and restrictions affecting the premises.

✓ Detail the deal. When drafting the document that will detail the results of your workout negotiations, the easiest and most effective way to ensure that all of the terms of your negotiations are addressed is to start with the beginning of the lease and highlight all changes required by the deal you've just struck through the end of the lease document. Sometimes you can combine modifications to a lease by modifying a term or definition that is used throughout the lease. Consider implications to other provisions when you make a change to one provision: you might need to change many other provisions impacted by the change. For example, if the size of the leased premises is being reduced, the number of parking spaces allocated to the tenant would likely be reduced as well or adjustments should be made to tenant's proportionate share of common area expenses. Or, if the length of the lease is extended, it may be appropriate to increase the rent for the extension.

✓ Attorneys' fees. If you are the landlord, check the lease to determine whether tenant is responsible for your attorneys' fees when tenant requests an assignment or sublease. Even if the lease does not contain such a provision, landlord might require the tenant to pay landlord's attorneys' fees and costs as a condition precedent to the lease workout solution (see the following paragraph).

✓ Conditions precedent. Landlord may require that a lease workout solution not take effect until certain conditions have been met or acts have occurred, such as: 1) remediation of environmental contamination by tenant, 2) a specified future date, 3) tenant pays past-due rentals and cures existing defaults, 4) tenant pays landlord's attorneys' fees, or 5) a new guarantor signs a guarantee. These are typically deal-specific: what is required to happen before the workout solution takes effect is dependent upon the deal terms. For example, if the tenant desires to sublease the premises to a new business operation, several conditions precedent to the effective date of the sublease could include: a) the landlord's written consent to the sublease, b) tenant's (and, possibly, landlord's) approval of the subtenant's financials, and c) subtenant's

written agreement to abide by the rules and regulations of the property as applied to the premises.

✓ Estoppel certificate. A very powerful tool available to the landlord is a document referred to as the “Tenant Estoppel Certificate” (tenant may also ask the landlord for an estoppel certificate, although tenants rarely do). An estoppel certificate contains a series of statements regarding the lease including: 1) that no defaults of the tenant and/or the landlord currently exist, 2) the current amount of rent and the security deposit, 3) the commencement and end date of the lease, 4) the date a tenant took possession of the premises, 4) that the lease (and any amendments) attached is all of the lease agreement between the parties, 5) neither landlord nor tenant has any claim against the other, and 6) that landlord’s construction (or the condition) of the premises is acceptable to tenant. If a tenant does not specify exceptions to these statements (for example, that the tenant took possession on a different date than specified), landlord may rely upon the estoppel as the tenant’s representation of the current state of affairs.

✓ Negative impact upon landlord. A lease workout proposal may have negative implications to a landlord. Take the situation where a 4-story office building tenant wants to early terminate its lease because it has laid off numerous employees. A substantial loan was obtained from a community bank by landlord to construct the office building and one of the covenants of the loan documents requires landlord to obtain the prior written approval of the bank to early terminating office leases. As a result of the tenant’s proposal to early terminate, landlord must contact the lender for approval, which then permits the lender to request updated financials from the landlord on the building. If those financials are deteriorating, lender may be reluctant to approve the early lease termination. Lender may require additional collateral for the loan, prepayment of interest, or other financial penalties from landlord. In today’s economy, every workout solution must consider these unintended implications to the landlord.

✓ Opportunities to impose new obligations. A workout solution offers the landlord a unique opportunity to require *new* obligations of the tenant (which should be addressed in the workout document) to accommodate the tenant’s workout proposal or to improve upon provisions in the lease. New tenant obligations could include requiring the tenant to: 1) provide performance and payment bonds if the new subtenant intends to reconstruct the interior of the premises, 2) indemnify landlord from environmental contamination caused by the assignee’s operation in the premises, 3) conduct an environmental audit of the premises to determine compliance with the lease and applicable law, 4) increase insurance provisions and coverage amounts that are presently outdated or insufficient, 5) pay over to the landlord profits from the sublease, 6) permit landlord’s walk-through of the premises to assess lease compliance, and 7) increase the security deposit. Be careful, however, not to make the demand for new provisions a condition precedent unrelated to the tenant’s workout proposal (see the following paragraph regarding reasonableness of landlord’s consent).

✓ Consent subject to reasonableness. When the lease calls for landlord’s consent to an assignment or sublease, Arizona requires that the landlord be “reasonable” in making that decision. What is “reasonable”? It’s easier to identify what is unreasonable: a decision that is arbitrary, unfair, illegal, or not made in good faith. Examples of unreasonableness include requiring a rent increase because it is not at market rate or declining to give consent because the proposed subtenant is a racial or religious minority. However, a landlord may withhold consent

because the proposed assignee or subtenant: 1) would be unable to fulfill the lease, 2) is financially irresponsible or unstable, 3) intends to use the premises in a way that is unsuitable to the property in which the premises is located or that is undesirable or unlawful, 4) is unsuitable to other tenants, or 5) has substantially inferior management or financials. When the tenant fails to provide any information supporting its workout solution, consent may be reasonably withheld. Additionally, landlord may withhold consent if the tenant is in default of the lease and cure of the default is unlikely or untimely. A current credit check should be obtained on the tenant and assignee or subtenant. A solid, objective, and substantial reason of some significance should support the landlord's decision to withhold consent. *See Tucson Medical Center v. Zoslow, M.D.*, 147 Ariz. 612, 712 P.2d 459, *adopting the Restatement 2d of Contracts, §205, for a recitation of these general rules.* If consent is given, make sure it is in writing.

✓ Liens against personal property. When the landlord is faced with either accepting a smaller tenant or one with little or no financial or operations track record, additional incentives from the tenant should be considered. One such protection is for landlord to have the right to file a contractual lien against tenant's personal property (trade fixtures, merchandise, equipment and inventory). *See Ariz. Rev. Stats. §47-9109.* On default, landlord may seize tenant's personal property to satisfy amounts owed under the lease, which is a contract. The lease should contain a provision prohibiting removal of the personal property by tenant except in the case of ordinary course sales and a UCC-1 should be obtained and filed on lease execution. In Arizona, a landlord has a statutory lien upon the tenant's personal property in the leased premises. *Ariz. Rev. Stats. §33-362.*

Conclusion. Commercial real estate landlords and tenants are facing severe financial pressures to reduce rental payments as a result of declining revenues. Several workout solutions offer bargained-for alternatives to a tenant's abandonment of the leased premises when rent can't be paid: 1) lease renegotiation, 2) early lease termination, 3) sublease, and 4) assignment of lease. This article contains practical information on each of these workout solutions plus critical points to be addressed when negotiating and documenting the chosen solution.

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About the Author:

Janet recently formed the JACKIM HAINES LAW GROUP llc, of Scottsdale, Arizona, with Susanne Haines, Esq., to represent commercial landlords and tenants and commercial lenders and borrowers in workout solutions required by today's declining economy. Janet has been practicing law, with an emphasis on commercial real estate and business, since 1978. Janet can be contacted at 480-556-1973 or [jjackim@jackimlaw.com](mailto:jjackim@jackimlaw.com).

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