



Implications of COVID-19 on Your Commercial Lease

Cresa Toronto Inc., Brokerage

April 20th, 2020



The New Reality

COVID-19 has rapidly changed the way we live and work across the globe (for now! and always?)

What we will discuss today:

- Rent Deferrals & Abatements
- Key Lease Clauses and Concepts
- Impact of Construction Delays
- Advice for Tenants / Occupiers – Planning for the Future
- Questions



No Conflicts

Our commitment to Occupiers

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100% of Cresa's transactions are done on behalf of occupiers.

CBRE

13% of CBRE's transactions are done on behalf of occupiers

CUSHMAN & WAKEFIELD

14% of Cushman's transactions are done on behalf of occupiers

JLL

14% of JLL's transactions are done on behalf of occupiers

No Conflicts of Interest

5.3

Billion SF

4.6

Billion SF

3.6

Billion SF

2.0

Billion SF

0

SF

Cresa never does business on behalf of the landlord.

CBRE

JLL

CUSHMAN & WAKEFIELD

Colliers INTERNATIONAL

cresa

There are millions of square feet represented on the landlord's behalf, nationally. Cresa never does business on behalf of the landlord.



The commercial real estate industry **lacks true transparency.**

Conflicts of interest undermine clients in subtle ways that often go unnoticed and unpunished. The divisions dual agency firms ostensibly use to avoid conflicts can be easily breached – with occupiers paying the price.

The market is consistently **supply-side oriented or landlord-centric.**

The market is driven by the supply available for lease and not by the demand. As a consequence, the status quo supports the interests of landlords and their brokers to the detriment of occupiers looking for space.

The relationship between **landlords and tenants is inherently adversarial.**

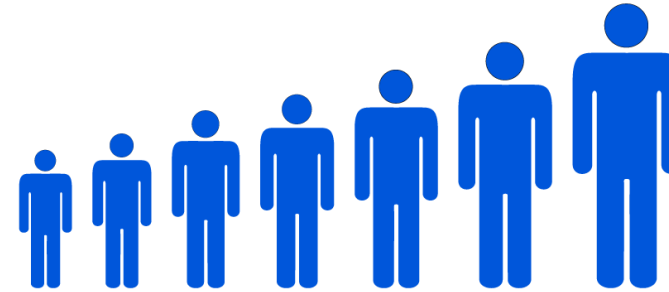
The landlord's objective is to maximize profits and shift economic and non-economic risk to the occupier. Their business depends on it. The only way to strengthen your position and secure real savings is to create credible leverage.

FEI Member Survey Results - 2018

85%



Believed space provided a competitive advantage or kept them competitive against peers



Culture

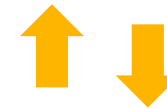
Brand

Attraction & Retention

Looking forward, in three years' time, what do you anticipate will happen in your organization with regards to the following?



Pre COVID-19 vs. Post COVID-19



■ Number of employees

■ Average square feet per employee

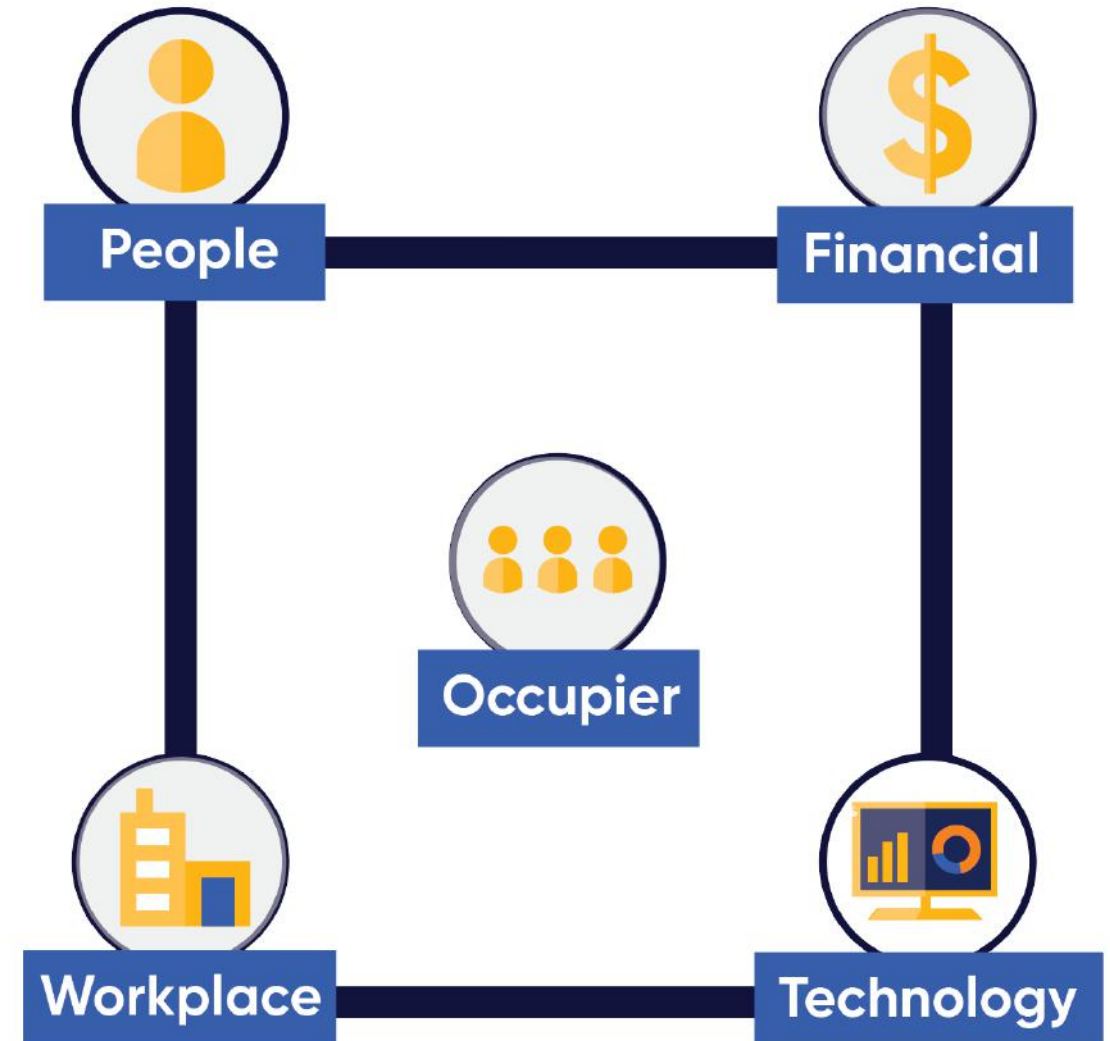
■ Percentage of employees in open space vs. closed offices

■ Total square footage of leased or owned

■ Percentage of employees working from home

The Occupier's Perspective

- Reduce monthly expenses in an effort to preserve capital
- Why pay for something that I am not using?
- Confusion – Is there anything in my 60- page lease that helps me?
- Fear Of Missing Out – Is my Landlord treating me as well as everyone else?
- This “Work From Home” is not that bad; maybe we will never need as much real estate in the future.



Initial Landlord Reactions

- Sorry we cannot help
- Look to the government for assistance
- Defer Realty Tax for 2 months
- Let's wait until after April 1
- We want/need to help, but just not sure how
- If we are going to help we will prioritize those with highest need (Retail)



Key Lease & Clauses Concepts

Force Majeure

- unforeseeable circumstances that prevent someone from fulfilling a contract.

Quiet Enjoyment

- right of an occupant of real property, particularly of a residence, to enjoy and use premises in peace and without interference.

Frustration

- unforeseen event either renders contractual obligations impossible, or radically changes the party's principal purpose for entering into the contract.

**Abandonment / Additional Rents / Exclusions /
Billing / Required Conditions /**



Shifting Landlord Reactions

- Willingness to defer but not forgive
 - Length of Deferral?
 - Payback Period?
 - Interest Rate?
 - Formality of Contract?
- Landlords seeking access to financial statements and input to Tenant's other cost saving measures
- Negative sentiment towards corporate and multi-national tenants looking for assistance
- Tenants starting to recognize:
 - A deferral may not be enough
 - Lost revenues are not coming back
 - Abatement or forgiveness maybe required



Request for Rent Relief – LL Response



REQUEST FOR RENTAL RELIEF

April 16, 2020
DELIVERED BY E-MAIL

Company
Address 1
Address 2
Attention: NAME

Re: Response to Request for Rental Relief at the Building located at Address, Toronto

You are receiving this communication in response to your letter dated March Day, 2020 in which you request relief from your obligations to pay rent as required by the terms of your lease. Please note that, like you, the landlord's business has been profoundly impacted by the effects of the current COVID-19 pandemic. Accordingly, we are using our best efforts to evaluate the needs of our portfolio of real estate investments, with the goal of fulfilling our fiduciary responsibilities and protecting value for our partners and other stakeholders, while also addressing the short-term and long-term needs of our customers.

In consideration of the foregoing, please complete the Request for Information (the "RFI") attached to this letter as **ADDRESSES 1 & 2**. The information you provide in the RFI will enable the landlord to evaluate your organization's request by providing us with information regarding your liquidity and financial commitments, the effects of the COVID-19 pandemic on your organization, your customers and your clients, and the other efforts that you are instituting to mitigate your cash-flow challenges. Please be aware that your response to the RFI in no way guarantees that the landlord will grant any type of advance of rental obligations, lease restructuring, or other tenant assistance as may have been requested, nor does it ensure that the landlord will grant any other amendment to your obligations as currently set forth in your lease.

In addition, in order to process your request and potentially engage in discussions with you regarding the same, please execute the Tenant Assistance Confidentiality Agreement in the form attached hereto as **ADDRESSES 1 & 2** (the "TACA").

Upon our receipt of (i) the executed TACA and (ii) the fully completed RFI, we will commence evaluating your request and will then be able to discuss a potential resolution with you in conjunction with our management team, investment partners, and/or, if applicable.

Please contact one of NUMBER or EMAIL@oxfordproperties.com to discuss any questions that you have with respect to this letter or the RFI.

Very truly yours,

OXFORD PROPERTIES GROUP on behalf of the Landlord

To: Name
Title, Sector Property Manager

cc: Andrew Tong, Senior Legal Manager, ATong@oxfordproperties.com; Christopher J. Lieb, Director & General Manager, CLieb@oxfordproperties.com

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SCHEDULE 1
REQUEST FOR INFORMATION
(See attached)

REQUEST FOR INFORMATION (RFI)

Tenant: Please prepare a response package that includes the information and responses required to comprehensively answer and address each item listed below. Landlord requires a complete response package to initiate its review of any request for tenant assistance.

A. HISTORICAL FINANCIAL INFORMATION

- Audited or certified Financial Statements for the past two (2) years (if not audited it must be certified by an officer of the corporation) to include: (i) Income Statement, (ii) Balance Sheet, (iii) Statement of Cash Flows, (iv) Notes to the Financial Statements, and (v) description of any significant Financing Activities for both Tenant organization and guarantor, if applicable.
- If Fiscal Year ends after March 1, 2020, provide most recent quarterly interim statements;
- Provide all bank statements and opening needs for the six (6) most recent months;
- If Tenant is used by a rating agency, confirm current rating, which agency provided such rating, and any changes to rating that have occurred in last two (2) years;
- Provide schedule of current/short-term (1-year) liabilities, and provide schedule of long-term liabilities (beyond 1-year);
- Please state and detail the total Cash and Cash Equivalents held by the Tenant;
- Signed two returns for the past two (2) years;

8. Description of the association, partners and partners;

9. List of shareholder;

10. List of any clients;

11. Description of any including: (i) name; (ii) nature of work;

12. Detail of the Tenant's purchase contracts, explicitly identified;

B. PROJECTED FINANCIAL INFORMATION

- Detailed financial plan;
- Details of any major investments;
- Provide a written plan to address such changes;

C. STRATEGY TO ADDRESS SUCH CHANGES

- In addition to seeking re-lease terms for:

D. INDUSTRY RELATED ISSUES

- Due to recent events, please provide an explanation of how Tenant's industry has been impacted and how it will likely change going forward, including an explanation of how Tenant intends to address such changes; and
- Please describe Tenant's outlook for its particular industry post-COVID-19 crisis (i.e. recovery time frame).

2. Describe the primary industry that the Tenant operates in, describe the Tenant's primary means of generating revenue, and describe the effects of the COVID-19 pandemic on the sources of revenue and anticipated strategy to mitigate any significant disruptions with respect to customers and clients;

3. Describe how the recent COVID-19 pandemic has affected Tenant's major customers and clients, and anticipated strategy to mitigate any significant disruptions with respect to customers and clients;

4. Confirm whether the Tenant has applied for, or is anticipating that it will apply for, any relief funding at a federal, provincial, or non-federal level, including details of which specific programs it will be seeking relief under (e.g., CARE Act, CERB, BCM, etc.);

5. Confirm the establishments of any Tenant claims through Tenant's insurance for loss or interruption of business, if any and provide copy of claims, if available;

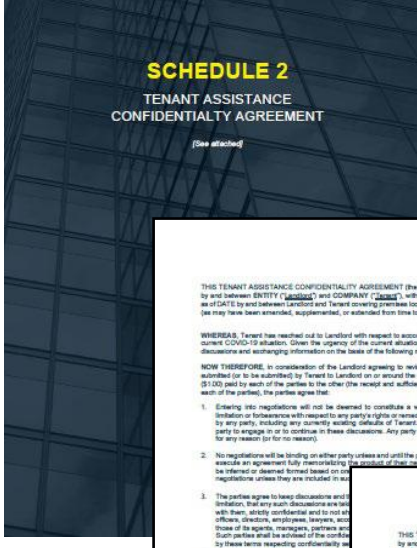
6. Confirm whether any discussions have occurred regarding postponement or modification of loan payments with Tenant's lenders; and confirm establishments of such discussions;

7. Provide information on how long the Tenant can reasonably be expected to meet its financial obligations using available cash, savings, and estimated interest income;

8. Confirm whether the Tenant has applied for any new loans or additional financing in 2020, and provide status of same, if applicable; and

9. Please provide any other comments regarding Tenant's plan over the next 90 days that Tenant believes relevant in assisting Landlord with the request for assistance.

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SCHEDULE 2
TENANT ASSISTANCE CONFIDENTIALITY AGREEMENT
(See attached)

THIS TENANT ASSISTANCE CONFIDENTIALITY AGREEMENT (the "Agreement") dated April 16, 2020 by and between ENTITY ("Landlord") and COMPANY ("Tenant"), with respect to the certain Lease stated as of DATE by and between Landlord and Tenant covering premises located at ADDRESS, Toronto, Ontario (as may have been amended, supplemented, or extended from time to time, collectively, the "Lease").

WHEREAS, Tenant has reached out to Landlord with respect to accommodation under the Lease given the current COVID-19 situation. Given the urgency of the current situation, Landlord would like to quickly begin discussions and exchanging information on the basis of the following mutually protective terms.

NOW THEREFORE, in consideration of the Landlord agreeing to review the Request for Information submitted (or to be submitted) by Tenant to Landlord on or around the date hereof, and the sum of One Dollar (\$1.00) paid by each of the parties to the other (the receipt and sufficiency which are hereby acknowledged by each of the parties), the parties agree that:

- Entering into negotiations will not be deemed to constitute a waiver, modification, rescission, limitation or postponement with respect to any party's rights or remedies, or a waiver of any breach or default by any party, including any currently existing defaults of Tenant. Further, there is no obligation on any party to engage in or to continue in these discussions. Any party may terminate discussions at any time for any reason (or for no reason).
- No negotiations will be binding on either party unless and until the parties document in writing and mutually execute an agreement fully memorializing the product of their negotiations. No binding agreement shall be inferred or deemed formed based on oral communications or positions advanced during the course of negotiations unless they are included in such mutually executed agreement.
- The parties agree to keep discussions and their respective terms, conditions and status (including, without limitation, but not limited to, any such discussions as taking place, as well as the information exchanged in connection with them, strictly confidential and to not share them with any other person or entity, other than with their officers, directors, employees, lawyers, accountants or those of their affiliates, or to the use of the Landlord, those of its agents, managers, partners and lenders in addition to the persons and affiliates listed above. Such parties shall be relieved of the confidential nature of the discussions and shall be prohibited to disclose by these terms regarding confidentiality set forth herein.
- The parties' discussions and related communications/commitments are not discoverable or admissible for any purpose in any litigation, dispute or proceeding. Notwithstanding the foregoing, Landlord is required by applicable law, regulatory authority or legal process to disclose the substance of these discussions or any information exchanged in connection therewith. Landlord shall be permitted to make such disclosure, provided that Landlord will furnish only that portion of the information that its legal counsel advises is legally required to be disclosed and, where applicable, will use reasonable efforts to ensure the disclosure will be afforded confidential treatment.
- Landlord's obligations to treat any information and documentation provided by Tenant hereunder as confidential will expire on the date that is one (1) year after the date hereof.
- If any provision of this Agreement is held to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.
- The parties hereby agree that this Agreement will enter into the benefit of and be binding upon the respective successors and assigns of the parties hereto, provided that the Agreement may not be assigned by Tenant without the prior written consent of Landlord.

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This Is A Negotiation Event

Tenants require clear goals and objectives, a sound negotiation strategy and communication map

Key Considerations

- Financial and contractual Terms and Conditions of the Lease
- Ownership and governance structure of the Landlord
- Debt and other financing risk on the Property
- History of Tenant/Landlord relationship
- Financial stability of the Tenant

Rent Abatement and Lease Restructures may prove viable solutions over Lease Terminations for Default



Commercial Construction is Shut Down

How to best position your project depends greatly on where you are in the planning or construction cycle

- Amend Critical Dates (Current and Future Lease)
- Seek Leasehold Improvement Draws from Landlord
- Could be an opportunity for Tender Pricing
- Review materials and items requiring long lead times.
- Finalize plans for permit applications
- Be prepared to start real estate projects earlier than desired.



Client Resources



www.cresa.com



www.cresatoronto.com/cre-covid-19

All available on the website, as well as additional office-created thought leadership



dJ Whitepaper

March 19, 2020

Force Majeure Clauses - What Are They and What Do They Mean

Does COVID-19 excuse parties from performing under a contract? What happens if such parties cannot perform? In many contracts, including real estate leases, a "force majeure" clause can provide the answers.



dJ Whitepaper

March 19, 2020

Remote Worker Enablement

As more work at home declarations are announced, how can you as a business owner prepare to transition your workforce into a work-at-home team that still performs at a high level? We've created a step-by-step process to help you prepare.



>Blog

March 18, 2020

Cresa COVID-19 Response: Our Commitment to Supporting Your Organization

Like you, we at Cresa have spent the past weeks assessing the quickly evolving situation around COVID-19 and actively planning how best to support our employees and clients during this taxing time.



>Blog

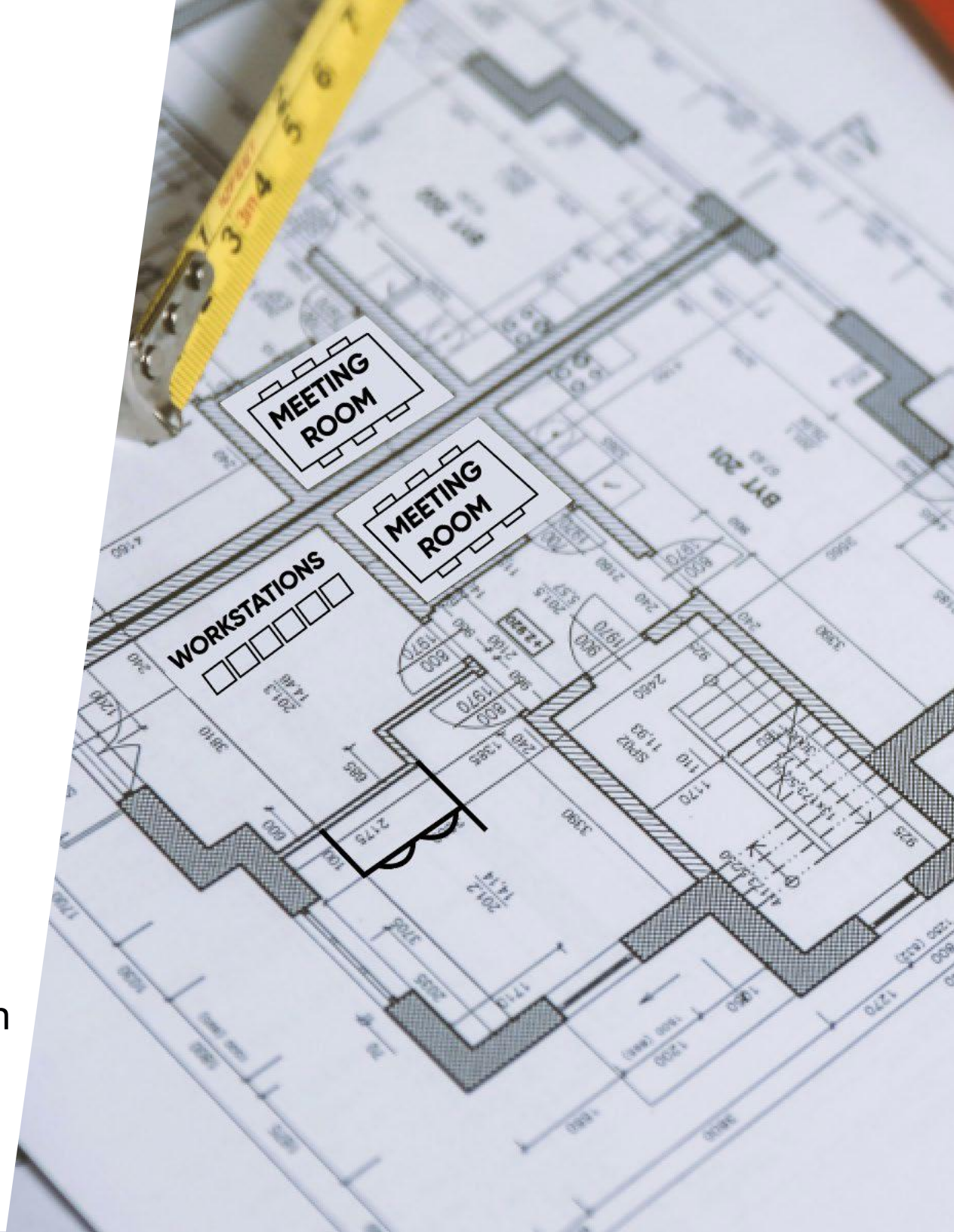
March 18, 2020

Working from Home, the New Normal

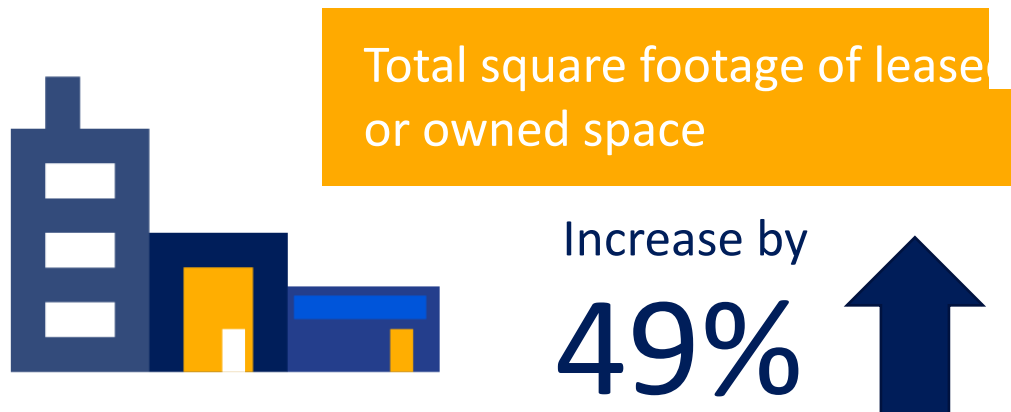
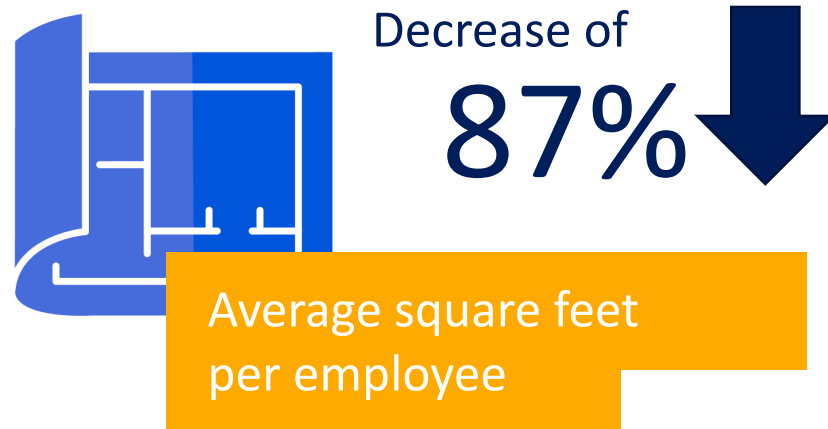
As news of the Coronavirus (COVID-19) continues to unfold, we should all take a moment to think about what our new sense of "normal" will be during this time.

Closing Thoughts

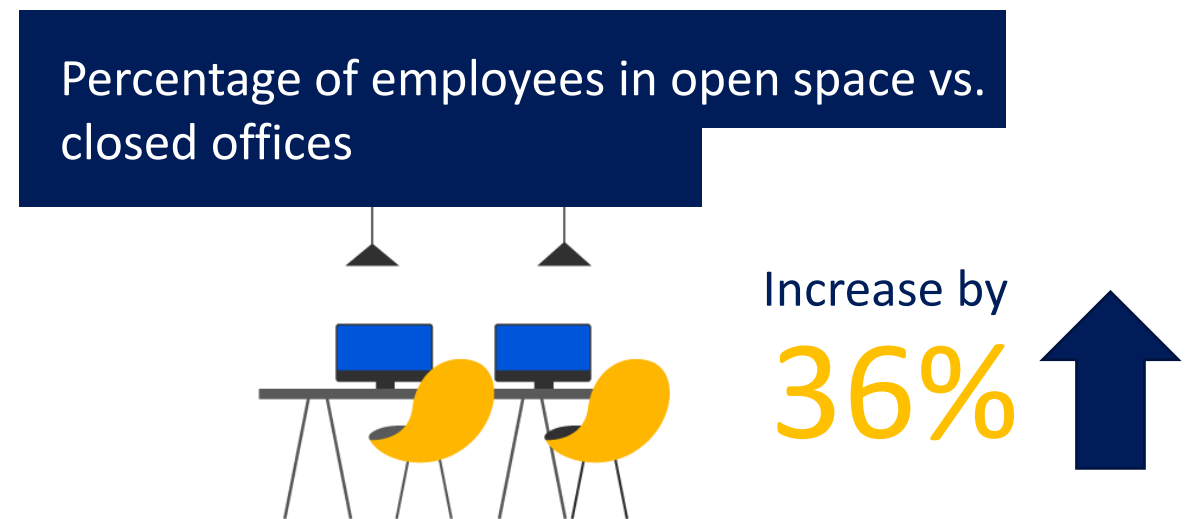
- Tenants should focus on Specific Actionable Strategies vs. General Advice or "following the herd".
- Understand your lease. Be careful of unintended consequences of default.
- Stay up to date: Will the Canadian Emergency Commercial Real Estate Assistance Program (CECRAP) help me or my Landlord?
- Take the time to gather valuable data on how your organization is performing from home (this is a learning opportunity).
- Develop a formal return to work strategy (including an assessment of office layout and practices).



FEI Member Survey Results - 2018



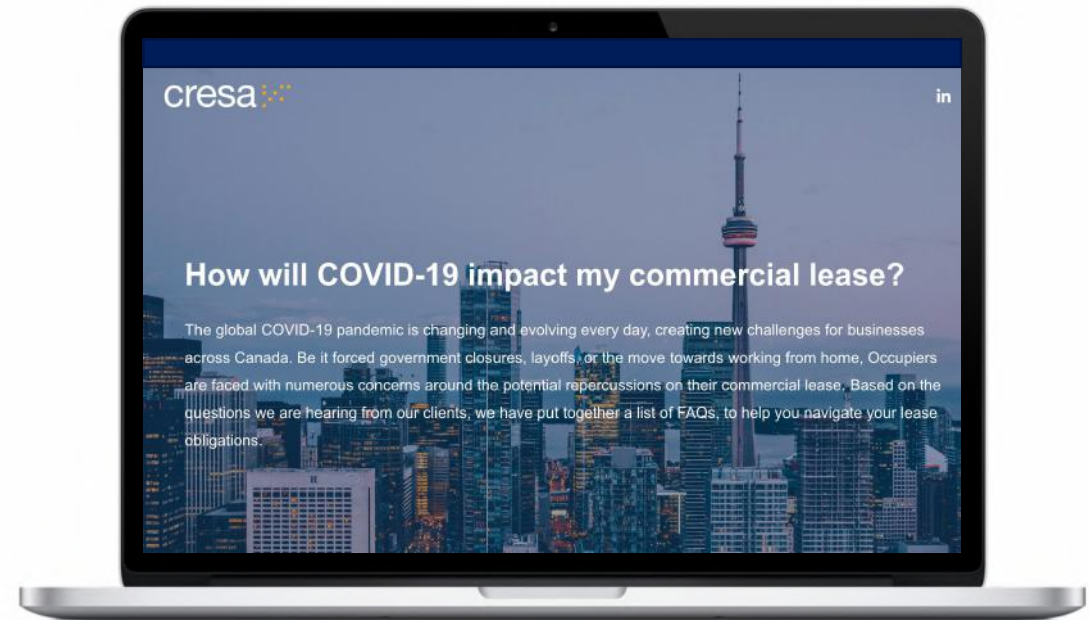
Looking forward, in three years' time, what do you anticipate will happen in your organization with regards to the following?



www.cresa.com



www.cresatoronto.com/cre-covid-19



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