

Special information

Corona crisis: Preventing landlord-side gestures from escalating into a written form crisis

Due to the constant spread of the coronavirus SARS-CoV-2, there are increasingly strict regulations in Europe and especially in Germany.

However, not only the health effects, but also the economic effects put companies to a great test. Retailers, bars and many other businesses will have to stay closed in the coming weeks due to official regulations in order to contain the spread of the coronavirus SARS-CoV-2. As a consequence, this will lead to financial bottlenecks on the tenant side. **Despite the lack of income, many shop operators or owners of businesses find themselves confronted with the current expenses for rented rooms and space during the crisis. Especially since the opening of retail outlets, cultural and leisure facilities and restaurants has been largely prohibited or at least massively restricted by general decrees. A reduction of rent or a suspension of rent by law is not possible under German law - unlike e.g. in Austria - because this is only possible if the rented property is defective.** However, according to German jurisdiction, even in times of crisis there is no defect in the rented property if the rented property cannot be used temporarily due to external circumstances or official orders based on these circumstances. Especially not if the shop or business is allowed to remain open, but the customers stay away for fear of contagion, for example. The tenant therefore bears the operating risk and is still obliged to pay the rent in full. In such cases, the landlord and tenant will therefore need to work together to find individual solutions in order to meet the economic challenges together.

According to media reports, the most recent measure of a real estate investor is exemplary in this respect. Even before the state imposed restrictions on public life, he had already called on the operators of his leased shops, which do not offer everyday consumer goods, to close them down as a precautionary measure. In the event of closure, the investor waives payment of rent and operating costs for a certain period from the date of closure. Other landlords have already followed this example with similar measures.

However, in order to ensure that such exemplary behavior does not subsequently become the landlord's or tenant's undoing, the particularities of tenancy law - namely the special written form requirement of §§ 578, 550 S.1 BGB (German Civil Code), which is anchored in tenancy law - must be observed.

This is because rental agreements for commercial premises and areas are often concluded for a term



of several years. A long term is usually economically very important for the parties to the contract; because often the investments made by the landlord or tenant in the rental property, e.g. for special conversions and extensions, only pay off over a long term. The contracting parties therefore also trust in the fact that the rental object will be used or can be used for a long time.

However, if the special written form is not observed when concluding the rental agreement and supplements to the rental agreement, this can have fatal consequences for the landlord or tenant. Because if a rental agreement is not concluded in the special written form under rental law for a period of more than one year, it is deemed to be concluded for an indefinite period of time according to §§ 578, 550 S.1 BGB. Thus, non-compliance with the written form requirement results in the rental agreement being effectively concluded; however, despite an agreed fixed term, the rental relationship can be terminated prematurely at any time by ordinary termination with the statutory period of notice.

However, the investments made in reliance on a long term are often lost if the lease is terminated prematurely. This can mean a major economic loss for the landlord or the tenant. In addition, unexpected costs are incurred in connection with the search for a new location and the tenant's relocation as well as the new letting by the landlord.

In particular the rent as well as rent changes and a waiver of the rent are generally subject to the special formal requirement. Almost every change without observing the written form can therefore lead to a violation of the written form and to a premature termination of the lease. The statutory written form is, however, already not complied with if the agreements on the adjustment of the rent were fixed on any written document. Rather, certain additional requirements, both in terms of content and form, must be complied with.

Therefore, landlord and tenant are well advised to agree on the granting of concessions in view of the current situation in a written addendum to the rental agreement; a telephone call or correspondence by e-mail, fax or post is not sufficient. On the contrary, the blessing of accommodating behavior can quickly turn into the curse of premature termination of the lease due to the written form.

It should be noted that these principles naturally also apply outside times of crisis.

The above explanations are general and cannot take into account specific features of the individual case. In case of actual concern, an individual analysis and consultation is required in any case.



The above statements are only a non-binding compilation according to the current status. No liability is assumed for the correctness and completeness. We would be pleased to support you in checking and, if necessary, implementing the above measures in your company.

The contact persons of our law firm who are known to you are also available here. In addition, you will find the contact persons who have been particularly involved in the above-mentioned topics.

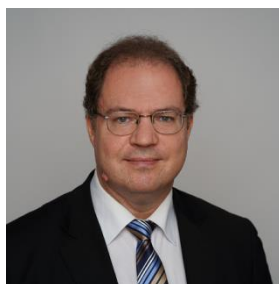


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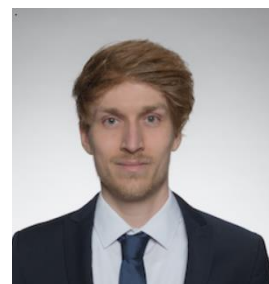


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Concluding remarks

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