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COVER STORY COMMERCIAL REAL ESTATE

LIFELINE

South Florida's small businesses scramble to stay afloat as they await federal aid

By [Brian Bandell](#) – Senior Reporter, South Florida Business Journal
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Urban Mining CEO [Steven Kaufman](#) was forced to close his electronics refurbishing/resale facility in Lauderdale Lakes due to the COVID-19 pandemic because it's not an "essential" business.

And he's not sure he can pay the April rent for his space.

Kaufman plans to apply for a federal loan through the recently enacted CARES Act to help keep his employees in place and his business afloat.

But it's unclear how soon he'll get his hands on the money to make that happen.

Still, Kaufman could be one of the lucky ones as his landlord, HP Capital, has indicated a willingness to work with him and other tenants, he said. It will be challenging to pay his bills without customers dropping off equipment.

"Our inventory is quickly selling out," he said. "Without 'new' used equipment coming in, we are going to run out of inventory to process and to sell."

Thousands of businesses are in the same boat. And it's a distressing situation for landlords, as well, who depend on rent checks to meet their financial obligations, including mortgages, insurance and maintenance.

Many landlords are now working with tenants to reduce or defer rents. But that assumes tenants will be able to pay the deferred rents later. Some landlords are also guiding tenants through

applications for federal aid, while extending due dates until tenants receive the money to pay their rents.

Approved March 27, the Federal Coronavirus Relief Law, known as the CARES Act, aims to throw small businesses a lifeline – if they'll take it.

The \$2 trillion aid package includes the Paycheck Protection Program, which offers 100% federally guaranteed loans to cover rent, payroll and other crucial expenses for businesses with 500 or fewer employees for up to eight weeks. If a company maintains its payroll, then the loan would be forgiven.

“It’s a Band-Aid. It gives us time to catch our breath, and I think it’s a great start,” said [Lyle Chariff](#), president of Miami-based commercial brokerage [Chariff Realty Group](#). “It will put enough money into people’s pockets to keep them alive, but it will eventually evaporate.”

Businesses weigh loan programs

The federal government is eager to put money into the accounts of small businesses, but whether they should accept it isn’t an easy decision for business owners.

The terms of the loans are quite favorable, as they’re designed to encourage businesses to rehire and retain workers, said attorney [Thomas R. Lehman](#), a partner with Miami-based Levine Kellogg Lehman Schneider + Grossman. Unlike most loans, there are no requirements for appraisals, loan-to-value ratios or personal guarantees.

“This is the best loan you will ever see in our lifetimes,” Lehman said.

Landlords that qualify as small businesses could also qualify for the program to support payroll and mortgage interest payments, Lehman said.

However, the percentage of the loan that’s forgiven declines if a company can’t maintain its payroll. Given the uncertainty of when businesses will reopen and the health of the economy at that time, it’s challenging for companies to gauge whether they’ll have the revenues to support holding on to their staffs.

Chariff said many small businesses don’t have the documents ready to apply for the loans, so organizing them will take time. Plus, companies that struggled prior to the pandemic may decide it’s not worth reopening and won’t seek the loans at all, he added.

“There are loans available that could possibly be forgiven, but that’s not really the solution,” said [David Goldweitz](#), senior director of tax and accounting at Fiske & Co. in Miami. “The solution is for tenants to get forbearance for 90 or 120 days without the risk of eviction.”

That’s mainly because thinly capitalized companies might not recover, should the recovery take longer than anticipated, and they will “burn through their loans,” he added.

The CARES Act will indirectly benefit landlords by making it easier for tenants to pay rent, said [Ian Weiner](#), president and CEO of Boca Raton-based commercial property owner Pebb Enterprises. He expects to show compassion to tenants that can’t immediately pay their April rents and direct them to the loan programs, he said.

While this will likely impact Pebb's revenue, Weiner noted another change in federal regulations could allow its lenders to let that slide. The Federal Deposit Insurance Corp. has encouraged banks to work with borrowers that need short-term modifications on their loans due to COVID-19 without forcing banks to label those loans "troubled" and write them off as losses.

The CARES Act also includes tax benefits related to the way real estate owners calculate the depreciation of their properties over time. That won't have an immediate impact because companies must submit tax filings for the benefits, but it will eventually provide a boost to some landlords, said [Ashlie Forum](#), a partner in Marcum LLP's Tax & Business Services division who leads the firm's real estate team in the Southeast.

Tenants ask landlords for more time

Whether a tenant has enough time to tap federal aid before rent is due largely depends on the landlord. Publix informed tenants in its shopping centers that it will waive two months of rent. Of course, Publix is the anchor tenant in most of those properties, and grocers are "essential" businesses that remain operational during this era of shelter-in-place orders.

But Publix seems to be the exception to the rule, as most landlords likely aren't in a position to waive rents if they're to fulfill their financial obligations.

Most commercial leases don't have provisions for rent relief in the event of a pandemic, so landlords will have to decide whether to grant tenants a break, said Shutts & Bowen attorney [Matt Chait](#), who works on commercial real estate litigation.

Still, by order of the Florida Supreme Court, no writs of possession will be issued now to enforce evictions, so landlords have few options to remove tenants. That might encourage landlords to deal with tenants, especially if those businesses have locations in several of the landlord's properties, Chait said.

Gov. [Ron DeSantis](#)' April 2 executive order suspending evictions for 45 days only applies to residential leases, Chait added.

Many business tenants are already reaching out to landlords to seek relief, Chariff said. Potential solutions include deferring rent for several months, extending the duration of the lease, spreading out smaller payments over the remainder of the lease, temporarily reducing the rent or paying only for common expenses like taxes and insurance for a few months.

"When you have someone who has a viable business, as a landlord, getting a dollar is better than having a vacant space," he said. "The majority of people I'm talking to aren't paying the rent. Tenants feel they will be able to negotiate, instead of handing over a dollar when it might cost them only 30 cents later."

In most cases, the decision to grant rent relief will be up to the mortgage holder, so the landlord will need the lender's permission.

[J.C. de Ona](#), Southeast division president for [Centennial Bank](#), said the bank will work with commercial property owners that need assistance. It could defer payments for three months and either extend the length of the loan, or make the deferred payments due when the loan matures. The CARES Act loan programs, which his bank is participating in, feature fast and simple application processes, so relief should be coming soon for many tenants, he said.

Another area of negotiation is between national franchisors and their franchisees. Most franchisees are small businesses without vast financial resources, but they can ask their franchisors to provide concessions, such as waiving royalty fees or discounting supplies, said [Barry Wolfe](#), senior managing director of the retail group at Marcus & Millichap. Franchisees can also seek loans under the CARES Act.

Many of Coconut Creek-based Butters Realty & Management's office tenants have reached out to seek extensions on their April rent or for rent relief, and the company is trying to be understanding of tenants' circumstances, said [Darcie Lunsford](#), Butters' executive VP and director of office leasing. Many South Florida businesses have suffered a loss of revenue, especially those in the tourism, hospitality, retail and outpatient medical sectors, she said.

"We are trying to work with tenants that really do have a dire requirement and offer deferrals," said Lunsford, who also serves as president of NAIOP of Florida. "The CARES legislation provides tremendous support for tenants, and we will require that tenants seek help. But landlords can't shoulder all of the responsibility because we have lenders and we have bills to pay, as well."

However, for tenants that were frequently late paying rent before the COVID-19 pandemic, it may not be worth providing relief, Lunsford said. Some businesses simply won't reopen.

Market won't be the same

The CARES Act will rescue scores of businesses, but there's little doubt that many places that close will never reopen. This could send shockwaves through South Florida's real estate market.

"If they were putting good dollars into a bad business and didn't want to face reality and throw in the towel, this gives a lot of those people justification to say, 'I quit,'" Chariff said. "Spaces will be repurposed. [Rental] rates will definitely come down. This is a total market correction."

The properties hit the hardest will be those in high-rent districts, where high-dollar property sales have pumped up rents in recent years, Chariff said. Those rates won't make sense anymore.

This will accelerate the transformation of malls that were already struggling, since some of their tenants won't survive, Marcus & Millichap's Wolfe said. The increase in vacancies should cause more malls to be redeveloped, a trend already underway before the coronavirus pandemic.

Still, the new vacancies will create opportunities for expansion at reasonable rates for businesses flush with cash.

"Twenty years ago, Yellowstone had disastrous forest fires and they were afraid it would never be back. But, within a few years, they started seeing seedlings come up, and now it's bigger and better than it ever was," Wolfe said. "That is what we will see in retail. We will have a more healthy, thriving retail sector than we had before."

Federal relief programs for small businesses

Paycheck Protection Program

Qualifications: In business before Feb. 15, 2020; fewer than 500 employees, whether for profit, nonprofit or an independent contractor; most restaurants; most franchisees, even with more than 500 employees.

Loan size: 250% of monthly payroll costs, up to \$10 million, based on average payroll for last 12 months. For a new business, it will be average payroll for January and February 2020. Seasonal businesses can average payroll for a 12-week period.

Use of loan proceeds: Payroll (excludes portion of employees making over \$100,000), benefits, rent, interest on mortgages and other debts incurred before Feb. 15, and utilities. Must use 75% of proceeds for payroll.

Repayment: Fully forgiven if used on allowable expenses and payroll is maintained for eight weeks. Otherwise, repayable over two years at 1% rate.

Small Business Debt Relief Program

Small businesses with existing SBA 7(a), 504 and microloans can have all principal, interest and fees covered for six months. The same benefits can apply to new borrowers under these programs.

Economic Injury Disaster Loans

Up to \$2 million with an initial disbursement up to \$10,000 within three days of applying for a business with 500 or fewer employees to fund sick leave, retain employees, pay the rent or mortgage, and deal with supply chain disruptions.

Payroll tax deferral

Payroll taxes through Dec. 31, 2020, may be deferred over the following two years. Recipients of Payroll Protection loans are not eligible.

Source: Marcum LLP