

MSF CLIENT ALERT

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Coronavirus – Landlord Liability

Landlord Liability for Tenant Operating a Non-Essential Business During COVID-19 Emergency

As most are aware, New York's Governor Cuomo has ordered the closure of all non-essential businesses in New York, permitting them to operate only remotely. The question arises: could a landlord be liable if a tenant violates this order. The answer is: it's possible, but there are basic steps that landlords may take to limit the likelihood of such liability.

New York's executive order 202.8, signed by Governor Cuomo on March 20th, provides that a violation of the order closing all non-essential businesses is "subject to enforcement as if this were a violation of an order pursuant to section 12 of the Public Health Law." Section 12-b of the Public Health Law provides that a person that "willfully" violates a public health regulation may be punished with up to one year in prison and fines of up to \$10,000.

The key word is "willful." A prudent landlord that learns a tenant is violating a COVID-19 emergency order should take steps to document that the landlord does not consent to the violation. Thus, the Landlord should inform the tenant, in writing, that the tenant must close the premises and comply with the COVID-19 emergency orders and should notify the local department of health of the tenant's violation of the emergency order. In New York City, that means the New York City Department of Health and Mental Hygiene. Elsewhere in New York that means the local county health department. Landlords should take care to make a record of the report by asking

for a copy of the report and recording the case number and other information associated with the report.

Landlords should also be aware that if they knowingly permit a tenant to occupy leased premises for "unlawful trade, manufacture or business," they can be liable to other tenants at the property for damages they might suffer under Real Property Law section 231. Conducting non-essential business prohibited by the COVID-19 emergency order could be viewed as unlawful trade or business.

Thus, because of the possibility of criminal and civil violations of the COVID-19 executive orders, prudent landlords should take proactive steps to prohibit their tenants from violating these orders and should contact their local health departments or other authorities if their tenants refuse to comply.

MSF's COVID-19 Task Force stands ready to assist any landlords with these important issues.

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For more information or if you have any questions about how this new development may affect your business, please contact Howard Koh.



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