

MSF CLIENT ALERT

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Coronavirus Guidance – Real Estate

In light of the rapid spread of Coronavirus (COVID-19) across the globe and within the United States, property owners and landlords are facing many challenges on how best to protect the health and safety of tenants and staff, while balancing the needs of workers and businesses. While the impact will be unique to every business, the following are some issues to consider:

The time is now for property owners and landlords to begin enacting existing emergency management and business continuity plans and developing new strategies to address this serious public health event. Given that our understanding of COVID-19 and the governmental response are ever-changing, property owners and landlords should gather updated information and assess risk on an ongoing basis to ensure that business plans adequately address the threat and that measures to protect tenants and staff are enacted quickly and efficiently.

As we work to mitigate and contain the COVID-19 outbreak, the following are key considerations for property owners and landlords

Stay in the Know

Guidance from federal and state public health officials will change as more is learned about the virus. Accordingly, property owners and landlords should be regularly monitoring trustworthy websites like the Center for Disease Control's (CDC) COVID-19 [Summary Page](#) for the latest best practices guidance from public health experts.

Communicate Openly and Frequently with Tenants

Just as important as keeping up with the latest reliable sources of information is informing tenants about your response to the crisis. Property owners and landlords need to be proactive when it comes to sharing information with tenants and the public. Consider establishing a team so that communication is streamlined and questions can be addressed on a timely and consistent basis. Also consider displaying CDC public service announcements at all building entrances.

As the virus spreads, the likelihood that a tenant or staff member at your building tests positive grows. Consider implementing systems and processes to (1) ensure that you are notified if a tenant or staff member is diagnosed with COVID-19 and (2) provide appropriate notice to others affiliated with the property. Your obligation to notify tenants if another tenant or staff member is diagnosed with COVID-19 will vary in accordance with emerging public health mandates, individual lease terms, and an evolving industry standard. Be sure to review lease agreements for provisions that may obligate you to notify tenants about security or safety risks present on the property and stay alert for any governmental recommendations or mandates that could apply to you.

At the same time, a thoughtful balance must be struck; individuals have a right to privacy and HIPPA regulations preclude disclosure of a person's medical history. On the other hand, shared elevator banks and contiguous spaces present increased risks to other specific tenants when an owner receives notice of "positive" for a tenant or staff member. A careful balancing of competing interests must be struck. MSF stands ready to guide you through these challenges.

Currently, there is no official requirement that property owners or landlords notify building tenants about COVID-19 risks. However, you should be aware of what your peer owners and landlords are doing. If a significant number of other owners/landlords in your geographic region are notifying tenants as a matter of course, then you may want to do so as well in order to avoid later claims that an emerging standard of care was not met.

Assess Your Risk

To understand the best ways to respond, you need to understand your risk. To do this, first evaluate the range

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of risks to your property, tenants, and staff stemming from the COVID-19 outbreak. After you identify the potential risks, consider the consequences of each individual risk. Then, rank each risk based on (1) how likely the risk is to occur and (2) how serious the consequences of that risk will be. This will help you focus on the most important issues related to the spread of COVID-19 and prioritize resources and attention where they are needed most. This will also allow you to determine whether your existing emergency and business continuity plans adequately address the risks associated with COVID-19.

Prepare to Implement Response Plans

If your company already maintains emergency response and business continuity plans that address public health incidents and pandemics, you should work to implement these plans. However, based on the results of your risk assessment, you may find that your existing plans need to be expanded to address this particular public health threat. If that is the case, use guidance from public health officials, industry resources, and counsel to make appropriate changes and/or additions. Ensure that all stakeholders understand their roles and whom to contact with questions or concerns.

Establish Hygiene Protocols and Other Measures

As with any biological or chemical contaminant, it is important that common areas under the control of the property owner or landlord be cleaned on a regular basis. It isn't clear yet how long the virus lives on surfaces, which is even more reason to clean surfaces anywhere people congregate. There should be constant and consistent cleaning and disinfecting of high-traffic areas, such as elevators, elevator buttons, handrails and other surfaces regularly contacted by human hands, restrooms, playrooms, gyms, swimming pools, laundry rooms and the like. There should also be installation and maintenance of hand sanitizer dispensers at all building entrances and other strategic locations, such as near mailboxes, the concierge desk and in elevators (where people press buttons). Besides increasing sanitary measures and having a building-wide plan in place, it might also be a good idea to temporarily suspend social

gatherings, such as meet and greets, apartment complex meetings, or other activities in the building that require people to gather. While property owners and landlords should be informed and prepared, avoid panicking and creating anxiety among tenants.

Confer with Building Vendors

Property owners and landlords should stay in constant communication with vendors who provide building services, including maintenance, sanitation, and security. Inquire with vendor companies about their disease management measures and their plans and ability to provide services in the event of personnel shortages.

Enact Employee Safety Measures

Consider measures to protect the safety of your employees. Such measures will differ based on the responsibilities of your various employees and your day-to-day business operations. The CDC recommends that all Americans practice social distancing to help stop the spread of the virus. If you have employees who can work from home, assess what preparation you need to put in place to ensure they can access corporate resources while not in the office. Provide guidance on accessing your network and maintaining communication. For employees who cannot work remotely, other protective measures may be useful. Remind employees about CDC guidance to clean their hands regularly and avoid close contact with anyone who is sick. If employees are required to come into physical contact with others as part of their duties, consider investing in personal protective equipment like latex gloves. Also, consider providing employees with updated guidance on interacting with tenants and members of the public, such as practicing non-contact forms of greeting in lieu of shaking hands. Given the CDC's recommendation that employees who are sick should stay home from work, you should develop a staffing and backup plan to cover key building functions while employees recuperate.

[Coronavirus Guidance - For Employers](#)

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Adhere to Privacy Requirements

If you decide to make a building wide notification that a tenant(s) has tested positive for the COVID-19 virus, be aware of applicable privacy laws and regulations. Typically, privacy rules will not apply if your notification does not include the infected individual's name or other identifying characteristics, but it is important to confirm that a notice does not trigger any privacy obligations before it is transmitted.

Cybersecurity Considerations

Your corporate network is likely to see increased stress if utilized by tenants and employees during a heavy period of telecommuting. As such, confirming the cybersecurity readiness of your corporate network and building systems is imperative.

Review Your Leases and Legal Obligations

Property owners and landlords will need to carefully consider their leases to ascertain whether there is either a force majeure clause or a rent suspension clause which will trigger in these circumstances. Whether the tenant can suspend payment of sums due under a lease will depend on the specific wording of these clauses.

Property owners and landlords should also review their insurance policies to ascertain whether loss of rents/business interruption losses will be recoverable notwithstanding that it may be difficult to evidence physical damage to the property.

Property owners and landlords may also need to consider their obligation to provide services under the lease and whether in circumstances where they are unable to provide the required services, they may be in breach of their covenants which would leave them open to a claim for damages from their tenants.

Relevant language in leases and insurance policies should also be reviewed to determine the distribution of preparedness, response, and remediation costs between landlord and tenants. Particular attention should be paid to distribution of costs for additional cleaning costs that could be incurred to reduce the possibility of virus transmission in both common areas and tenant spaces. Additionally, given that response and remediation costs are not always covered by insurance, policy language should be carefully examined to determine what costs, if any, are reimbursable.

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Let Us Know How We Can Help

While these are difficult times, we want to assure you that we are focused on uninterrupted client service and you can rely on us to deliver the expertise you have come to expect. We are closely monitoring and actively responding to all developments. We have put in place a variety of measures based on guidance from the CDC and the New York City Department of Health and we will continue to monitor and advise on this evolving crisis. Please stay safe and let us know how we can help.



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Additional COVID-19 Resources That Might Interest You.

[MSF Coronavirus Guidance](#)

[Coronavirus Guidance - Employment](#)

[Coronavirus Guidance – Taxation & Estates](#)