

## *Impact of COVID-19 on Real Estate Transactions*

The world-wide declared pandemic (<http://www.cidrap.umn.edu/news-perspective/2020/03/deeply-concerned-who-declares-covid-19-pandemic>) is impacting daily life, both personally and professionally. Real estate transactions are being delayed, projections altered and consumer-oriented businesses impacted. While small businesses, with limited cash reserves, are immediately impacted, large corporations, with high levels of debt, are also at risk (see <https://www.washingtonpost.com/business/2020/03/10/coronavirus-markets-economy-corporate-debt/>). The impact on construction projects, from large scale build to suit and multi-floor projects to interior tenant improvement projects, will likely be first felt in supply chain and material shortages and worker shortages if quarantines are imposed. With national retailers, including Apple and Nike, announcing nationwide store closures, planned "grand opening" and other retail-oriented events are being sharply curtailed (see: <https://rew-online.com/icsc-cancels-vegas-convention-as-covid-19-situation-escalates/>; and <https://www.marketplace.org/2020/03/12/retail-stores-cleaning-customers/>).

The bottom line is that all aspects of a landlord's relationship with its tenants and daily operations, including building systems operations and access, need to be examined. Office building closures in Seattle and Chicago are being reported: <https://www.westsideseattle.com/robinson-papers/2020/03/14/jefferson-square-office-tower-closed-cleaning-after-covid-19-patient>; <https://www.chicagotribune.com/coronavirus/ct-coronavirus-case-chicago-bmo-harris-office-building-20200313-no2ub755lzek5dml2sxjhb6p4-story.html>. Restaurants, bars and various entertainments venues have also been ordered closed in various California cities. See: <https://la.eater.com/2020/3/15/21180760/los-angeles-bar-restaurant-shutdown-order>; <https://thehill.com/policy/healthcare/487695-california-governor-orders-new-restrictions-on-bars-restaurants-amid>.

Most professionally managed buildings that outsource their property management, janitorial and engineering services, have likely received communications from these vendors about heightened cleaning procedures, and access control procedures are likely to follow. Placement of hand sanitizers in lobbies and on individual floors is encouraged (see: <https://info.debgroup.com/blog/the-importance-of-hand-sanitizer-placement-in-the-workplace>). Good hygiene practices need to be reviewed with couriers and building vendors whose workers are in frequent contact with other persons or machinery that is accessed by many people.

With some municipalities enacting eviction relief moratoriums for residential tenants, we anticipate a sharp increase on the demands of a local municipality's judicial system to address commercial evictions. Public hearings on conditional use permits, sidewalk permits and other common approvals are also likely to be delayed for a variety of reasons (cancellation of hearing, reassignment of staff). Put bluntly, it is not a good time to get into a dispute requiring jury trials or arbitration panels. See: <https://www.abajournal.com/news/article/one-federal-court-suspends-court-appearances-others-restrict-visitors-amid-coronavirus-concerns>. Both JAMS and AAA have issued

advisories concerning in person appearances. [https://www.jamsadr.com/news/2020/coronavirus-\(covid-19\)-advisory-for-jams-visitors](https://www.jamsadr.com/news/2020/coronavirus-(covid-19)-advisory-for-jams-visitors); <https://go.adr.org/covid19.html>.

All this leads to the following as an informal checklist of issues and potential contractual terms to be reviewed:

- Landlord delay and force majeure provisions in Tenant improvement work letters and construction agreements – make sure these provisions allow for “non-default” delays attributable to public health emergencies that have a direct impact on supply of materials and labor and issuance of building permits.
- Review Landlord default provisions – is a building closure that lasts three days a trigger for rent abatement?
- There will be a need for Tenant modification agreements and forbearance agreements. Tenants will be requesting rent relief, contract counter parties will be requesting extensions, price adjustments and, in certain cases, contract terminations. Some “standard form” lease provisions may require revision. Discuss the various options with legal counsel. Certain tenants may not have the ability to withstand extended periods of closure.
- Review utility/building services interruption clauses: Many tenants may have successfully negotiated provisions that expanded utility interruption to building services and building closures (i.e.: access) that impact their ability to conduct business operations. These clauses need to be reviewed.
- Landlords with buildings that have a concentration of health care providers, governmental offices that serve the public, shared office space tenants (WeWork) and publicly accessible common areas will need to adopt specific policies.
- While the current thinking is that the virus is not spread by centralized HVAC systems, there are various preventative maintenance actions that should be reviewed for centralized HVAC systems. See <https://www.achrnews.com/articles/142808-coronavirus-prompts-response-in-hvac-industry>. Bringing in more outside air is recommended as opposed to maintaining energy savings “demand control” measures. See: <https://fhai.com/insights/maintaining-school-hvac-systems-to-address-covid-19/>.
- Landlords that have retail tenants with continuous operations clauses or minimum hours of operations should proactively discuss a waiver of these requirements with their tenants. Buildings with food service establishments should discuss “best practices” with restaurants (note recommendations on “self services” operations (see <https://www.kingcounty.gov/depts/health/communicable-diseases/disease-control/novel-coronavirus/food-establishments.aspx>). The impact of a virus infection that arises from a food service establishment in an office building will likely not be limited to the premises itself.
- Review operating expense budgets. Operating expenses for calendar year 2020 will likely increase. Confirm “pass through” rights, and review “caps” and “exclusions.”
- Looking at worse case scenarios, will tenants with lease terms expiring in the next few months be able to vacate to new premises? Can landlords commit to firm dates for delivery of possession?

- Owners with buildings that are transacting under purchase and sale contracts that contain contingencies, in particular contingencies involving issuance of governmental approvals or completion of construction of certain improvements or occupancy levels, should negotiate “exit” provisions.
- Check-in with risk management. The general view is that business interruption resulting from Covid-19 is not a covered peril that triggers coverage under BI insurance. See: [http://www.rmmagazine.com/2020/03/11/covid-19-business-interruption-coverage-concerns/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=covid-19-business-interruption-coverage-concerns](http://www.rmmagazine.com/2020/03/11/covid-19-business-interruption-coverage-concerns/?utm_source=rss&utm_medium=rss&utm_campaign=covid-19-business-interruption-coverage-concerns)

If we can be of assistance and to discuss various options and specific situations, please feel free to contact any of the Buchalter Real Estate Attorneys below.

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