



One Firm Worldwide®



WHITE PAPER

March 2020

Coronavirus: Urgent Considerations for the Real Estate Industry

Real estate investors, owners, managers, and occupants have been greatly affected by the sustained and continued spread of the novel coronavirus disease (“COVID-19”). Tenants must deal with leased and otherwise occupied space. Investors, owners, and managers of office, multifamily, residential, health care facilities, and hospitality have encountered issues regarding property rights and obligations related to interaction with tenants, guests, employees, unions, managers, contractors, and customers, both under applicable law and pursuant to third-party agreements, such as leases, licenses, and management agreements.

TABLE OF CONTENTS

ROUTINE PREVENTIVE MEASURES	1
MANAGING ILLNESS, EXPOSURE, AND CONFIRMED COVID-19 DISEASES	1
ENHANCED PREVENTIVE MEASURES	2
EVALUATE <i>FORCE MAJEURE</i> CLAUSES AND CONTRACTUAL RISK	3
LAWYER CONTACTS	3

Real estate investors, owners, managers, and occupants have been greatly affected by the sustained and continued spread of the novel coronavirus disease (“COVID-19”). Tenants must deal with leased and otherwise occupied space. Investors, owners, and managers of office, multifamily, residential, health care facilities, and hospitality have encountered issues regarding property rights and obligations related to interaction with tenants, guests, employees, unions, managers, contractors, and customers, both under applicable law and pursuant to third-party agreements, such as leases, licenses, and management agreements.

While this situation is fluid and we are continuously evaluating legal issues created by new developments, including updated guidance from relevant public health authorities (including, in the United States, the Centers for Disease Control and Prevention (“CDC”), and in the United Kingdom, Public Health England) and state and local public health authorities, this document is intended to highlight several key issues for consideration of tenants, landlords, and other owners of real estate. The appropriate response for property owners, landlords, and tenants will vary with geographic region, type of property and the particular facts, and circumstances of each individual situation. We encourage all property owners, landlords, and tenants to review and implement the latest guidance from the relevant public health authorities and to adapt their COVID-19 policies and procedures accordingly.

ROUTINE PREVENTIVE MEASURES

- **Stay Informed.** Given the rapidly changing environment, it is critical to stay informed of evolving guidance coming from health authorities, including instructions that may affect property in specific local areas.
- **Communicate Regularly.** Tenants and property owners should consider providing regular communications to their employees and tenants, respectively, as needed, in light of evolving conditions and health authority guidance affecting COVID-19 protocols.
- **Post Notices.** Tenants and property owners should consider distributing to their employees and tenants, respectively, and posting in common areas general COVID-19 guidance from the relevant public health authorities, practices for limiting the spread of COVID-19, symptoms of COVID-19, and steps to take if an individual believes

they may have been exposed to or infected by COVID-19. This may include notices encouraging individuals who are under self-quarantine or self-isolation pursuant to guidance issued by the relevant public health authorities to remain home. Owners of hospitality property should consider posting similar notices for their guests.

- **Hand Sanitizer.** Tenants and property owners should consider making hand sanitizer available at the entries and in high-traffic common areas under their control.

MANAGING ILLNESS, EXPOSURE, AND CONFIRMED COVID-19 DISEASES

- **Instruct sick employees to stay home.** Tenants and commercial property owners should consider giving their employees and tenants, respectively, clear instruction that individuals should not come to work if sick, especially those who are experiencing any symptoms, such as fever, new cough, sore throat, runny nose, or new shortness of breath. Residential landlords and owners of hospitality property should consider encouraging their tenants and guests to limit interaction with others outside of their premises or room when experiencing any of these symptoms. Tenants and property owners should consider having a policy in place regarding management of persons arriving or becoming sick at the property, as well as procedures for any return, consistent with public health authority guidance.
- **Establish a policy to manage known exposure to COVID-19.** If someone in an individual's household, their intimate partner, or someone they have cared for has tested positive for COVID-19, that individual should not come to work and should notify their supervisor. Similarly, if any individual has been in close proximity (within 6 feet) of a person with known and confirmed COVID-19, the individual should not come to work and should notify their supervisor. Individuals with known exposures should be encouraged to follow the guidance of the applicable public health authority to assess potential exposure. These individuals should not come to work and should self-quarantine for at least 14 days to monitor for development of illness. Landlords and owners of hospitality property should consider encouraging their guests and tenants to follow applicable public health authority guidance for self-quarantine in the event of known exposure to COVID-19.

- *Cleaning Procedures.* Those parties with the obligation to provide janitorial service to building space, including owners of hospitality property, should consider implementation of procedures for the thorough cleaning, in accordance with guidance from the relevant public health authorities and industry practice, of any space known to be occupied by an individual who has been in close proximity (within 6 feet) of a person who has been confirmed to have COVID-19. Special care should be given to confirming employees and contractors performing this cleaning are equipped with adequate protective equipment.
- **Establish a policy to inform employees, tenants, and guests of possible exposures.** Should any landlord, property owner, or tenant determine that an individual confirmed to have COVID-19 has entered a property or premises, consideration should be given as to whether it is appropriate to notify other tenants, guests, and employees accordingly. In the event such a notice is given, it should not disclose the identity of the infected individual.
- **Establish a policy to respond to confirmed COVID-19 diagnosed individuals.** Property owners and tenants should consider developing an emergency plan for the isolation and temporary closure of building space impacted by an individual confirmed to have COVID-19. Landlords and owners of hospitality property should consider encouraging their guests and tenants to follow applicable public health authority guidance related to confirmed COVID-19 diagnoses. Those parties with the obligation to provide janitorial service to building space, including owners of hospitality property, should also consider implementing procedures for the thorough cleaning, in accordance with guidance from the relevant public health authorities and industry practice, of any space known to be occupied by an individual who has been confirmed to have COVID-19. Special care should be given to confirming that employees and contractors performing this cleaning are equipped with adequate protective equipment.
- **Establish a policy to manage high-risk travel.** If an individual has travelled to a “Level 2” or “Level 3” country (currently China, Iran, South Korea, Italy, and Japan) or other region that a health authority may designate in the future, the individual should not come to work and should self-quarantine for at least 14 days to monitor for development of illness. Landlords and owners of hospitality property, both residential and commercial, should consider encouraging their guests and tenants to follow applicable public health authority guidance for self-quarantine related to high-risk travel. Those parties with the obligation to provide janitorial service to building space, including owners of hospitality property, should also consider implementing procedures for the thorough cleaning, in accordance with guidance from the relevant public health authorities and industry practice, of any space known to be occupied by an individual who has travelled to a “Level 2” or “Level 3” country. Special care should be given to confirming that employees and contractors performing this cleaning are equipped with adequate protective equipment.
- **Notify local public health authorities.** In the event that a property owner, landlord, or tenant is notified that one of its guests, tenants, or employees, as applicable, has a known and confirmed exposure to or has a confirmed diagnosis of COVID-19, the landlord and tenant should follow relevant public health authority guidance to notify the authority.
- **Report self-isolation to landlord.** Landlords should consider requesting that tenants notify them in the event an employee of a tenant (or, in the context of a residential lease, the tenant itself) is self-isolating or self-quarantining based upon guidance issued by the relevant public health authorities. Owners of hospitality property and residential landlords should consider implementing protocols to eliminate employee interaction with any tenant or guest under self-quarantine or self-isolation.

ENHANCED PREVENTIVE MEASURES

Tenants, landlords, and other property owners should consider implementing enhanced protective measures in geographic regions where COVID-19 incidences are widespread and/or when their specific properties or premises are impacted by one or more confirmed cases of COVID-19.

- **Pre-verification of visitors.** Tenants and property owners may seek verification from guests in advance of their visit that the individual is not feeling sick, has not travelled to a “Level 2” or “Level 3” country, and has not been in close proximity (within six feet) of a person who has been confirmed to have coronavirus.
- **Evaluate lease provisions and institute property-relevant measures.** Most leases give landlords broad flexibility to create rules and regulations for the health and safety

of other tenants and guests. Landlords should consider utilizing these lease provisions to implement, in a clear and coordinated manner, such policies and procedures related to COVID-19 prevention and response that are applicable to their property, its occupants, and their visitors. Property owners and tenants should similarly consider the appropriate response and protective measures necessary to ensure the health and safety of their guests and employees.

EVALUATE FORCE MAJEURE CLAUSES AND CONTRACTUAL RISK

In addition to preparing for and responding to the imminent health threat posed by COVID-19, parties are increasingly looking to *force majeure* clauses for contractual relief in situations where the COVID-19 outbreak prevents or impedes contract performance.

- Applicable situations where *force majeure* is being implicated by this outbreak in the context of real estate include tenant leases, loan agreements, development agreements, hotel, and/or property management agreements, construction contracts, and real estate purchase and sale contracts.
- In situations where *force majeure* appears imminent, it is important to closely analyze the contract language and the applicable law in the governing jurisdiction to determine whether COVID-19 would likely be determined to excuse performance, particularly in circumstances where “epidemic” or “illness” are not specifically referenced in the *force majeure* provision.
- Where the impact of COVID-19 may be interpreted as a *force majeure* event and a potential basis for relief, it should be confirmed that the delay or failure at issue is actually related to COVID-19 rather than other unrelated issues that may have arisen.

- In the case of any *force majeure* situation, careful attention should also be given to the contractual notice provisions and other conditions under the contract that must be satisfied in order to claim relief (including the discharge of mitigation duties).

Insurance policies relating to the relevant property and/or project should also be reviewed to confirm whether coverage may apply and, if so, whether there are specific notice requirements applicable to a claim for coverage. Other legal concepts specific to the relevant jurisdiction or situation may also be applicable, such as frustration, material adverse change clauses, break clauses, rent suspension provisions, and the ability of a landlord or other property owner to close or restrict access to property where not directly required by law, order, or regulation.

LAWYER CONTACTS

Kyle M. Baltés

Chicago
+ 1.312.269.4341
kbaltés@jonesday.com

John J. Crowley

London
+ 44.20.7039.5778
jjcrowley@jonesday.com

Anna Cartwright

London
+ 44.20.7039.5290
acartwright@jonesday.com

Robert C. Lee

Chicago
+ 1.312.269.4173
rclee@jonesday.com

Brian L. Sedlak

Chicago
+ 1.312.269.4334
briansedlak@jonesday.com

David Smith

London
+ 44.20.7039.5285
dsmith@jonesday.com

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our “Contact Us” form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.