



Coronavirus Disease (COVID-19)

Real Estate Industry Business Interruption Claims (Loss of Rents & Delay of Opening)

A novel (new) coronavirus (COVID-19) was first identified in Wuhan, China in December 2019 and subsequently spread to other nations including the USA and Canada. The situation presents a public health emergency and has been declared a pandemic with significant implications for communities and workplaces. Public health agencies continue to closely monitor the situation and issue frequent updates and guidance which has resulted in the temporary suspension or closures of businesses. Landlords may face loss of rental income or business interruption.

State of the Industry

The real estate industry hosts many avenues for foot traffic every day. There are commercial shopping and business plazas, large and small residential properties, industrial spaces and various other types of properties hosting commerce and people each day. Properties in which individuals are confined or in close proximity to each other for work, living, shopping and more, are spaces where a virus has the opportunity to spread rapidly.

Currently, retailers across the globe are temporarily reducing hours of operation or closing their doors to the public completely to help prevent further spread of COVID-19. Business owners are faced with a tough and costly decision – to close, or not to close?

Residential properties are faced with concerns as business owners and large corporations are telling employees to stay home if they do not feel well. Building residents may be hosts to the virus, leading to the need for controls to prevent the spread of disease to others within the property.

As the situation is changing daily, real estate owners and managers must find the best way to keep those who rely on them, their employees, their tenants and their communities safe. Preparing for a threat, such as a pandemic, is critical to minimize impact. Having a well-designed plan allows for a flexible response at all levels of severity this crisis may go through.

Unlike companies with a single workplace location, real estate managers are typically spread across many regions, offices, or properties, this makes planning and preparedness vital in the event of a pandemic. Property owners and managers should do everything in their power to prevent and manage the issue. Increasing awareness about COVID-19 through communication with staff is a good place to start.

Business Interruption Claims

Business Interruption, or Loss of Rents coverage, if purchased, is found in the first party property form for most real estate owner's policy and is subject to deductibles. There are limits expressed for three main types of coverage including building, personal property, and business interruption. There will be various other sub-limits throughout the policy.

An adjuster will be assigned to the claim once tendered. Their job is to determine if coverage is afforded based on the policy language. They will examine "what is covered" and "what is not covered" to make their determination.

To claim business interruption coverage, there needs to be a covered peril to trigger the policy. Adjusters usually start with:

- Direct Physical Damage
 - Was there damage to the property itself?
- Location scheduled
 - Was the damaged property intended to be insured?
- Covered peril / Virus exclusion
 - Was a covered peril in the policy the cause of damage?
 - Is there a virus exclusion in the policy?

These are all important conditions to consider before presenting a claim.

There are many prominent law firms that will provide opinions, that despite the above, and with their help, coverage for business interruption coverage can be achieved.

What attorneys will look for in a policy:

- Ingress / Egress Clause
 - Was the property barred from use?
- Civil Authority
 - Did a Federal, State, Provincial, or local government agency not allow access to the property?
- Sue & Labor Clause (Preservation)
 - Was the loss of damage eminent, therefore the property needed to be secured from eminent loss?

Adjusters will argue that the above three clauses are not triggers for coverage for business interruption and will likely issue either a reservation rights while reviewing the claim further or deny the claim outright.

However, here's what to keep in mind when filing a claim:

- File as soon as loss occurs
- Expect reservation of rights or denial
- Duty to substantiate and prove claim is on the insured
- Keep track of the claim with three “buckets” of loss for Business Interruption:
 - Expediting Expense
 - Extra Expense
 - Business Interruption Loss of Revenue and Loss of Rents
- HUB's duty: to present claim in best possible light to insurers for our clients.

Vacancy Clause

What's next:

Real Estate clients should check their policies now for a “Vacancy Clause”.

Triple Net Properties are the most affected. Should a property become vacant for a period of time, there is a trigger to change, restrict, or cease coverage:

- Vacancy clauses triggered 30-60 days after a vacancy and can be one or more of the following:
 - Can modify coverage from replacement cost to actual cash value (depreciation)
 - Can delete vandalism coverage
 - Can outright cease coverage for property damage
- In some policies there is a difference between definitions of “vacant” and “unoccupied”
 - Check your policy to see if there are these definitions and understand the difference
 - May make a difference in policy restrictions
 - Notify your broker if your property is no longer being occupied and what actions you are taking to protect the property from loss.

Transfer of the Virus

Infected individuals can spread COVID-19 through various methods:

1. Respiratory secretions, from a cough or sneeze may produce airborne droplets. These droplets can land in the mouth or nose of persons nearby or may be inhaled into the lungs.
2. Person-to-person among close contacts (about 6 feet). Person-to-person spread is thought to occur mainly via respiratory droplets produced when an infected person coughs or sneezes, similar to how influenza and other respiratory pathogens spread.
3. There is evidence that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or eyes.

The COVID-19 virus is spreading easily and sustainably in the community in some affected geographic areas. The best way to prevent the illness is to avoid being exposed to the virus. Additionally, be sure to follow the guidance and recommendations from authoritative sources, such as the Center for Disease Control and Prevention (CDC) or the Public Health Agency of Canada.

Center for Disease Control (CDC) Recommendations

Strategies for Minimizing Workplace Exposure

- Ensure flexible sick leave policies consistent with public health guidance and encourage sick employees to stay home.
- Separate sick employees who appear to have acute respiratory illness symptoms upon arrival to work or who become sick during the day.
- Emphasize good personal hygiene practices including frequent hand washing, sneeze & cough etiquette, and social distancing as much as practical.
- Perform routine environmental cleaning of frequently touched surfaces.
- Advise employees before traveling to take certain steps.
- Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and refer to CDC guidance. Similarly, employees exposed to a co-worker with confirmed COVID-19 should refer to CDC guidance.

Tips for Real Estate Owners & Employers

PLANNING

- The goal of a pandemic plan should be to reduce the spread of infection among your employees, residents, and tenants while minimizing the impact and maintaining business operations.
- Involve representatives from all departments in the planning process to be sure you cover all operations.
- Assess your workplace exposure by identifying the health risks your employees might face.
- Solidify back-up suppliers for critical building operations.
- Anticipate absenteeism and cross train employees to ensure work continues.
- Identify remote capabilities for employees (i.e. phone, computer systems) and how much on-site support will still be necessary.
- Failure to plan and act could create legal and liability exposures like negligence.

STAFF COMMUNICATION

- Encourage good personal hygiene and provide additional hand sanitizer.
- Remind staff of social distancing: keep 6' whenever possible, limit vendor/3rd party contact and avoid shaking hands.
- Communicate sick leave policies and consider adapting them as the pandemic evolves.

CLEANING

- Implement increased cleaning schedules for high touch surfaces & objects.
- Provide employees with extra cleaning supplies and possibly hire additionally outside parties to assist in this increased cleaning effort.

RESIDENTIAL PROPERTIES

- As sick employees are told to stay home, consider extra precautions such as temporarily closing property community rooms, fitness centers, etc. to prevent the risk of spread to other residents or property managers in gathering spaces.
- Communicate to residents the importance of staying inside their unit if they feel ill or show any symptoms of the coronavirus.
- Determine if someone in a unit is ill before completing a maintenance request and consider delaying all requests other than emergency. (For emergencies: staff should wear mask and gloves in unit to be disposed after, and wash hands thoroughly.)
- Leasing staff should adhere to governmental mandates if showings are prohibited. If leasing staff will be holding showings, ask visitors if they are sick and consider the delay of showings.

COMMERCIAL PROPERTIES

- Make sure leases address potential business disruptions in a pandemic.
- Update "force majeure" clause (unforeseeable circumstances) in all contracts.
- Encourage your tenants to create their own business continuity & pandemic plan.

TENANT COMMUNICATION

- Offer staff contact information if they have questions or concerns.
- Provide dependable resources for the most up-to-date information.

Additional Resources

- The World Health Organization ([WHO](#)) has developed programs to train incident managers and other stakeholders in preventing the spread of the virus.
- The Centers for Disease Control and Prevention ([CDC](#)) website has multiple resources on various topics for protecting yourself and your businesses.
- [Public Health Agency of Canada has COVID-19 Resource Page](#)
- The Occupational Safety and Health Administration ([OSHA](#)) has guidance on control and prevention measures and employer can undertake.
- The Institute of Real Estate Management developed the Pandemic [Guide](#) For Real Estate Managers to help in planning efforts for this Coronavirus outbreak and to guide preparations for future pandemics when they occur.
- The Canadian Centre for Occupational Health and Safety ([CCOHS](#)) offers similar guidance on best practices for prevention and the [Government of Canada Webpage](#) also host a variety of resources including updates on current cases.
- HUB International has setup a [Coronavirus Resource Center](#) which has additional guidance to mitigate business impacts.

Summary

Do all that you can to follow the safety measures presented by civil authorities and take precautions to avoid exposure, and to help reduce the threat to your operations. Planning ahead will help protect your business, your employees and the general public. Educating and communicating to employees and tenants is essential. Continuously assess the risk and update your plan when necessary. Pandemics can be unpredictable but your response doesn't have to be. Evaluate your current policies and procedures to help you and those around you stay safe.

Get the latest information, guidance and resources on Coronavirus (COVID-19) to help you protect what matters most at hubinternational.com/coronavirus. For additional support, please reach out to your local HUB office.