



## *What issues might a landlord consider when evaluating the extent to which the owner may provide a COVID-free building for tenants?*

The ongoing coronavirus pandemic raises the question of whether landlords with leased properties can be held liable for injuries sustained when someone contracts COVID -19 at the premises. As the economy begins to reopen, landlords need to carefully consider how to maintain social distancing and the cleanliness of their buildings. A landlord's obligations in limiting tenants' and visitors' risk of exposure to the virus depends on what services (if any) the landlord provides at the property. Landlords should err on the side of caution and closely follow all CDC, manufacturers and local government guidelines. Below is a list of scenarios that highlight where potential risks may lie according to research by Coldwell Banker Commercial.

### Could Commercial Landlords Be Liable for Exposure to COVID -19?

According to New York state law, where the landlord maintains a common area or a portion of the premises controlled by the tenant, it can be held liable for injuries occurring in those spaces if the landlord created the danger or has actual notice of the danger, and fails to maintain the premises in a reasonably secure and physically safe condition. In general, landlords could be found liable if they fail to abide by the overall terms of the lease.

Courts will likely ask: (1) Does the lease provide the landlord with the right or ability to remediate the condition itself or to force the tenant to do so? For example, whether the landlord had the obligation or ability to disinfect the premises or require the tenant to do so. (2) Did the landlord know of possible exposure to COVID -19 at the premises (e.g., a confirmed or suspected positive case)?

To find out if this applies to you, please follow information from your own state and local government authorities, which will likely have information that will impact you more directly.

<https://bit.ly/2MvYyBp>

### Return to Work Guidance for Commercial Landlords.

A landlord's obligations are highest in areas that it has to exclusively maintain (e.g., common areas). Although some jurisdictions might limit landlord liability to dangers of which the landlord had actual knowledge, that distinction may lack a difference with regard to COVID -19 because of the geographic range and the pervasiveness of infection. Bottom line: act as if your property is at risk of infection.

For property where occupancy and maintenance duties fall under the tenant, the landlord's duties to protect people within that space are reduced. The landlord's responsibilities within that space are set by the lease agreement. Many of the landlord's obligations to protect visitors shift to the tenant in control of that space.

<https://bit.ly/37jIhVr>

### COVID -19 Considerations for Landlords and Tenants.

Whether or not the damage, destruction or casualty provision of a lease will be applicable during the COVID -19 crisis will depend on the specific language of the lease. Casualty provisions are typically written to cover damage caused by fire, floods or other natural disasters, but not cases where the physical building remains intact.

Most commercial leases contain hazardous material clauses that prohibit the use, storage or manufacture of hazardous materials on the premises, requiring the tenant to compensate landlords for any damages. Some leases require landlords to compensate tenants for any costs related to the presence of hazardous materials in the building that were not introduced by the tenant.

Tenants may argue that the presence of the COVID-19 virus in the building would violate the hazardous materials provision. The efficacy of this position depends on the precise language of the lease, since the definition of hazardous materials does not normally include bacteria, viruses or other diseases. Tenants may argue that in cases where landlord provides janitorial services to the building, the landlord is obligated to take measures to prevent the spread of COVID-19.

<https://bit.ly/3cSUvwB>

### **What Building Owners Need to Know About COVID-19 and Air Filtration.**

The CDC recently changed their stance on how they believe COVID-19 is spread - not through surface contact, but rather close proximity to a carrier via droplets in the air. These droplets are expelled by coughing, sneezing, and talking. Larger droplets tend to land on surfaces and travel very little, but smaller droplets can remain in the air for long periods of time and travel far, presenting a significant risk for those nearby breathing it in.

HVAC systems found in most commercial offices use filters with MERV ratings that range from 1 (worst) to 16 (best) based on several factors, including the size and amount of particle matter that is able to pass through. Standard commercial buildings use filters with a MERV rating of six. At this level, smaller droplets under 3 microns can still pass through. Meaning, the minimum requirements for most commercial office buildings are not high enough to filter out the droplets containing the SARS-CoV-2 virus.

Companies who want to get their properties ready for occupation are looking to upgrade their HVAC units and install BPI in their buildings across the country. While a MERV 10 rating will begin to filter out smaller droplets, a MERV rating of 13 or higher would be efficient at capturing airborne viruses. While bringing in more fresh air and upgrading MERV filters is a good place to start, owners should carefully consider other add-on technologies BPI, HEPA, and UV-C filters.

<https://bit.ly/3cNJ6y4>

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