

Client Alert

April 2020

COVID-19: Quarantine-Caused Vacancy Could Jeopardize Your Property Insurance Coverage

The COVID-19 pandemic already has impacted businesses on almost every level. Previously, Olshan [alerted clients](#) to the possibility of insurance coverage for losses caused by the interruption of business. But, landlords need to be aware of other potential impacts the COVID-19 response may have on their insurance protections.

Every landlord should have a property insurance policy that protects their real property from damage caused by catastrophic events, such as fire, flood, or earthquake. The coverages provided by such policies are typically on an “all risks” basis, meaning the coverage is very broad unless the cause of loss is specifically excluded in the policy. This broad coverage protects landlords from damage to property even if the cause of the loss is intentionally harmful conduct by bad actors, such as theft or vandalism.

Current COVID-19 response includes stay-at-home or shelter-in-place orders from government authorities. In many states, restaurants, theaters, and even barber shops have been completely shut down. Even in situations where a single employee is permitted to be physically present in the workplace, the general absence of your tenants from their business location may negatively impact your coverage.

Property insurance policies typically carry a vacancy exclusion. This exclusion eliminates or reduces coverage for certain types of damages when the property qualifies as vacant. Importantly, the terms for vacancy in your insurance policy can vary widely from the principles of landlord-tenant law addressing abandonment. The standard language from one large insurer defines vacancy as:

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Such building is vacant unless at least 31% of its total square footage is:

- (a) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
- (b) Used by the building owner to conduct customary operations.

Such language can be particularly problematic for a landlord renting to a shuttered business. If the exclusion is triggered, the policy excludes loss caused by:

- (1) Vandalism;
- (2) Sprinkler leakage, unless you have protected the system against freezing;
- (3) Building glass breakage;
- (4) Water damage;
- (5) Theft; or
- (6) Attempted theft.

For all other coverages, if the exclusion is triggered, the insurer “will reduce the amount [it] would otherwise pay for the loss or damage by 15%.”

Landlords should consider their situation and contact their insurance brokers regarding what steps, if any, can be taken with their insurance carriers to mitigate or waive this exclusion during this extraordinary time in our country’s history. Although certain state legislatures are considering bills to help business owners obtain coverage under existing insurance policies, to date such legislative action has not addressed mandated absence by tenants. Potentially, a landlord may wish to explore covering its property with a policy designed for abandoned premises, which may result in premium savings and extra funds to use during this difficult period.

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Olshan lawyers from multiple practice groups are working together with clients to address COVID-19-related matters, including the

CARES Act stimulus programs (i.e., the Paycheck Protection Program and EDIL) and other corporate matters, including contractual analysis and financing, tax, restructuring, employee benefits and employment practices, insurance coverage and litigation. Click [here](#) to access additional materials addressing issues raised by COVID-19.

Consultation with experienced insurance professionals and counsel can provide a better understanding of the precise scope and limitations of insurance assets. Please contact the Olshan attorney with whom you regularly work or the attorney listed below if you would like to discuss further or have questions.

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