COVID-19: Maintaining Building Operations and Preparing for Re-Occupancy

Thursday, March 26, 2020
2:00–3:00 pm ET

BOMA Coronavirus Resource Center:
www.boma.org/coronavirus
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Lessons Learned

- Mitigation is Undervalued and Essential
- Shortages and Bottlenecks are Inevitable
- Much Easier to Leave than it is to Return
Create a Risk Mitigation Plan

- Use Time Wisely
- Leverage Your Team
- Use Scenario Analysis
- Take Decisive Action
Anticipate Shortages in Supply

- Vendor Risk Analysis
- Suppliers / Contractors
- Be Creative
- Leverage Partnerships
Prepare for Re-Occupancy

- Points of Reference
- Stakeholders?
- Work Backwards
- What Must Go Right?
- What Could Go Wrong?
- Share the Plan
The Basics

▪ “Force Majeure” – Unforeseen “superior forces”

▪ Insurance Coverage – Business Interruption, Cancellation, Civil Authority, misc.

▪ Litigation – Claims and disputes are inevitable
Force Majeure

- “Force Majeure” – unforeseen “superior forces”
- Is COVID-19 a Force Majeure event?
  - It depends . . .
  - Express clauses in your agreements
45.7 Force Majeure. The occurrence of any of the following events shall excuse performance of such obligations of Landlord or Tenant as are rendered impossible or reasonably impracticable to perform while such event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty; and other causes beyond the reasonable control of the party obligated to perform (financial inability to perform excepted). Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant’s obligations to pay Minimum Monthly Rent and additional rent (unless the provisions of Article 23 apply) or excuse such obligations as this Lease may nevertheless impose on the party to obey, remedy or avoid, despite such event. If any work performed by Tenant or Tenant’s contractor results in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not excuse Tenant’s performance hereunder.
(e) Force Majeure. Landlord and Tenant will be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond the reasonable control of either party which shall include without limitation, all strikes, shortages of material, labor trouble, governmental restrictions and limitations, scarcity of materials or supplies, unavailability or delays in obtaining fuel, services or labor, war, insurrection, riot, governmental emergencies, floods, earthquakes and other acts of God.
§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, health advisories or state or federal shuttering of normal business activities, including restrictions of public gatherings and activities in response to a disease or national emergency, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.
Force Majeure

- What are my remedies?
  - It depends . . .
  - Express clauses in your agreements (excused performance, abatement, termination, equitable adjustment)

- What if my agreement is silent on this?
  - Alternative theories under contract law
Insurance Claims

- Does my existing policy cover COVID-19 closures, delays, disruptions, etc.?

- Potential Sources of Coverage
  - Business Interruption Insurance
    - Common exclusions (virus or bacteria (SARS), “no direct physical loss or damage,” mere decrease in revenues . . .
  - Contingent Coverage (BI)
    - Supply chains, indirect losses, etc.
  - Enhancements
    - Infectious diseases
    - Civil Authority
    - Political Risks
Litigation

- Litigation in light of COVID-19 is inevitable
- Contract delay / termination claims and damages
- Early mitigation is key
  - Temporary rent abatement/deferral
  - Notice where required
  - Understand the issues affecting all parties (clients, customers, landlords, tenants, contractors, suppliers), and the realities of their individual situations
- Alternative theories under contract
  - Impossibility, impracticability, frustration of purpose, material change, illegality
  - Court closures and administrative issues
Be Proactive!

- **Know Your Documents** – Review existing leases, contracts, and policies of insurance for risks, protections, NOTICE REQUIREMENTS.

- **Immediate Mitigation** – Reach out to affected parties (tenants, landlords, suppliers, etc.).

- **Seek Help** – Reach out to your team of professionals (insurance providers, attorneys, professional organizations) for advice, guidance and updates.
Cleaning Methods and Products

- Cleaning vs. Disinfecting (biomass reduction)
- Traditional wipe method vs. misting applications
- Electrostatic delivery systems are the preferred methodology for applying disinfectants vs. conventional wipe methods; if unavailable, traditional approaches using manual means may be used
- Refer to list of EPA-registered anti-viral products: [www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2](http://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2) or [www.americanchemistry.com/COVID-19/](http://www.americanchemistry.com/COVID-19/)
High Contact Surfaces
- Should include but not be limited to doorknobs, light switches, bathroom surfaces, locker rooms, toilets and urinals, sinks and faucets, kitchen areas/appliances, lobby floors, doors, benches, and all elevator buttons, panels, and associated walls

Enhanced Cleaning vs. Deep Cleaning
- *Enhanced cleaning* targets all common areas and high contact surfaces
- *Deep cleaning* is to be performed in the event a positive individual enters the building; efforts should be made to trace and target all areas in which the individual came in contact
Testing Buildings During the COVID-19 Outbreak

➢ **Viral testing** in buildings
  ➢ Not widely available
  ➢ Most companies lack the capacity or capability to respond with viral testing
  ➢ Not currently recommended on a large scale

➢ **Clearance testing** for buildings
  ➢ Pre- and post-testing of cleaned and disinfected surfaces
  ➢ Swab surfaces to validate efficacy of cleaning/disinfection; this testing mimics CDC protocols currently in place for hospital and healthcare environments
  ➢ Hopefully more common in the coming weeks
Testing Buildings During the COVID-19 Outbreak

- Ultimately, testing is the owner’s or tenant’s decision
- Can offer peace of mind when validating/refuting cleaning that has occurred
- Cost and practicality should be weighed against owner or tenant concerns
- Limitations - not virus specific and cannot guarantee occupant safety
Re-opening Buildings during the COVID-19 Outbreak

- **Mechanical Systems**
  
  - Continued operation during shutdown is critical
    - Allows for continued filtration and cleaner air exchanges
    - Consider replacing filters prior to any long-term shutdown
  
  - Maximize outdoor air supply of HVAC system where possible and consider extending operational periods up to 24/7, building purges at night
Re-opening Buildings during the COVID-19 Outbreak

➢ Potable Water

➢ Unprecedented situation which requires proactive maintenance
  ➢ Turn all faucets on and off every 2-3 days, especially during periods of low or no occupancy
  ➢ Allow to run for appropriate amount of time dependent on location from distal point
  ➢ Biofilm can begin to develop in stagnant water in as little as 3-4 days

➢ Consider flushing building water system before re-opening; disinfect if necessary
  ➢ Make sure to monitor all water systems, including but not limited to hot water heaters, ice machines, filtrations systems, etc.
  ➢ Reduction in building heat load (people) can result in inadequate management of latent heat load, resulting in high humidity and possible mold.
To enter a question simply type your question in the box in the lower left corner of the window and click on “Send”.

We’ll read as many questions as time allows and respond so that everyone may hear the answer.

If you are listening to the audio only and do not have access to the chat box, you may submit your questions to boma@commpartners.com.
Thank you for participating in today’s webinar.

BOMA International is actively working to provide commercial real estate professionals with credible information on how to mitigate the potential health and business impacts of the pandemic.

Guidance documents and resources are posted regularly at www.boma.org/coronavirus.